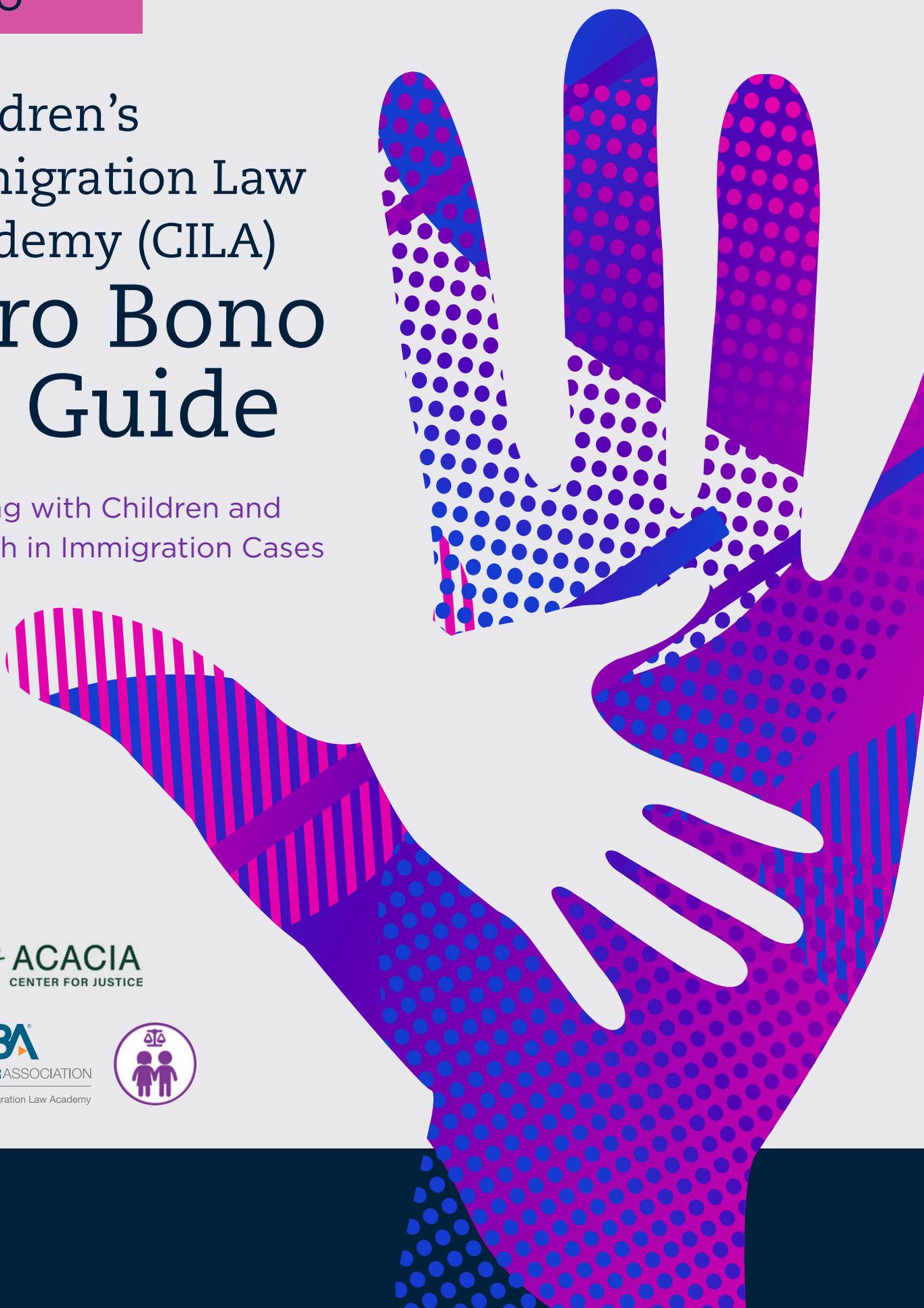


2026

Children's Immigration Law Academy (CILA) Pro Bono Guide

Working with Children and
Youth in Immigration Cases



CILA Children's Immigration Law Academy



“I think of legal representation as a form of personal accompaniment; it is like embarking on a difficult journey with your client, unable to confirm the destination, but providing guidance and companionship along the way. During my practice, I always felt like that accompaniment was just as important as the legal representation itself, because without it, the representation was likely to fail. For me it was a way of supporting another human being, validating that person’s existence, and sharing that person’s story. Because at the end of the day, your client will remember how you made him or her feel, just as much as the outcome of the case.”

—MEREDITH LINSKY, DIRECTOR OF THE
ABA COMMISSION ON IMMIGRATION

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****This is not legal advice. This is for informational purposes only and should not substitute your own research and analysis. This is not comprehensive. We simply wanted to highlight some information and resources to help get you started in your pro bono representation in a child’s immigration case.****

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GLOSSARY

Common Acronyms and Forms

- A#: Alien number
- [AR-11](#): Alien's Change of Address Card (USCIS)
- CAT: Convention Against Torture
- CBP: Customs and Border Protection
- DHS: Department of Homeland Security
- DOJ: Department of Justice
- EAD: Employment Authorization Document
- ECAS: EOIR Courts & Appeals System
- EOIR: Executive Office for Immigration Review
- FOIA: Freedom of Information Act
- [Form EOIR-26](#): Notice of Appeal from a Decision of an Immigration Judge
- [Form EOIR-28](#): Notice of Entry of Appearance as Attorney or Representative before the Immigration Court
- [Form EOIR-33](#): Alien's Change of Address Form (EOIR)
- [Form EOIR-42B](#): Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents
- [Form EOIR-61](#): Notice of Entry of Limited Appearance for Document Assistance Before the Immigration Court
- [Form G-28](#): Notice of Entry of Appearance as Attorney or Accredited Representative (DHS)
- [Form G-639](#): Freedom of Information/Privacy Act Request
- [Form G-1055](#): Fee Schedule (USCIS)
- [Form I-130](#): Petition for Alien Relative
- [Form I-192](#): Application for Advance Permission to Enter as a Nonimmigrant
- Form I-213: Report of Deportable/Inadmissible Alien
- [Form I-290B](#): Notice of Appeal or Motion
- [Form I-360](#): Petition for Amerasian, Widow(er), or Special Immigrant
- [Form I-485](#): Application to Register Permanent Residence or Adjust Status
- [Form I-589](#): Application for Asylum and for Withholding of Removal
- [Form I-765](#): Application for Employment Authorization
- Form I-770: Notice of Rights and Disposition
- Form I-862: Notice to Appear
- [Form I-912](#): Request for Fee Waiver
- [Form I-914](#): Application for T Nonimmigrant Status
- [Form I-914, Supplement A](#): Application for Family Member of T-1 Recipient
- [Form I-914, Supplement B](#): Declaration of Law Enforcement Officer for Victim of Trafficking in Persons
- [Form I-918](#): Petition for U Nonimmigrant Status
- [Form I-918, Supplement A](#): Petition for Qualifying Family Member of U-1 Recipient
- [Form I-918, Supplement B](#): U Nonimmigrant Status Certification
- HHS: Department of Health and Human Services
- ICE: Immigration and Customs Enforcement
- ICH: Individual Calendar Hearing (aka merits hearing)
- ICPM: Immigration Court Practice Manual
- IJ: Immigration judge
- INA: Immigration and Nationality Act
- LTFC: Long term foster care
- MCH: Master Calendar Hearing
- NBC: National Benefits Center
- NOID: Notice of Intent to Deny
- NOIR: Notice of Intent to Revoke or Rescind
- NTA: Notice to Appear
- OPLA: Office of the Principal Legal Advisor
- ORR: Office of Refugee Resettlement
- OTIP: Office on Trafficking in Persons
- PSG: Particular social group
- RFE: Request for Evidence
- ROP: Record of Proceeding
- SIJS: Special Immigrant Juvenile Status
- TPS: Temporary Protected Status
- URM: Unaccompanied refugee minor
- USCIS: U.S. Citizenship and Immigration Services



SECTION I.

I. INTRODUCTION

A. About CILA

The Children's Immigration Law Academy (CILA) is an expert legal resource center created by the American Bar Association (ABA). CILA's mission is to empower advocates who guide immigrant youth through complex legal procedures, to do so with courage, competency, compassion, and creativity. CILA builds capacity for those working to advance the rights of immigrant youth seeking protection through trainings, technical assistance, collaboration, and resource creation.

CILA serves nonprofit, pro bono, and private sector legal advocates who work with children in immigration-related proceedings. CILA began operations in Houston, Texas in late 2015 in response to the thousands of children from Central America who entered the United States at our Southern border. Many children were fleeing prolific violence and abuse in their home countries and seeking humanitarian protections offered under U.S. law. Through this work, CILA hopes to ensure more immigrant youth are represented and to provide the resources and expertise needed to support those who endeavor to represent them. In furtherance of this goal, CILA expanded its technical assistance program nationwide in 2022 and now offers trainings and working groups to a national audience.

Complementary and critical to our capacity-building efforts for legal advocates, CILA's social services program aims to increase capacity for social workers and social services providers serving immigrant youth at legal services organizations throughout the nation, thereby ensuring stability in the lives of youth so that they may meaningfully participate in their immigration cases.

Read about our impact in CILA's [Annual Reports](#). Should you or someone you know wish to support our work, make a donation [here](#).

Services and Resources

TRAININGS

CILA provides training opportunities for individuals who are working with children in immigration proceedings. CILA offers [trainings](#) covering a wide range of topics related to representing immigrant youth and emerging practice issues for advocates of all experience levels. We regularly train new legal staff at nonprofits who work with detained children, and through a prior collaboration with the National Immigration Litigation Alliance (NILA), CILA has a series of trainings focused on appellate and litigation strategy. Webinar recordings are available to view on the CILA website with a [CILA account](#).

PRO BONO

CILA hosts a platform, *Pro Bono Matters for Children Facing Deportation*, on CILA's website to connect pro bono attorneys and law students with pro bono opportunities from around the country. Legal service providers post a wide range of opportunities to help immigrant children and families, from short-term projects to direct representation. CILA also supports pro bono attorneys by providing trainings and resources. Moreover, CILA has a webpage dedicated to pro bono coordinators with [creative models for pro bono engagement](#) and expert tips regarding running a pro bono program.

Resources

CILA creates a vast array of resources available to assist legal service providers, attorneys, legal staff, and social services staff with their work to help immigrant youth. Resources can be found on CILA's website on the [CILA Resources at a Glance page](#) and our [blog](#). Additional CILA resources can be accessed after setting up a [CILA account](#). Contact CILA at cila@abacila.org if you have questions.

- **Champions for Immigrant Youth:** CILA sends a [monthly newsletter](#) with legal updates, changes in immigration policy, resources, opportunities to connect and learn, and advocate celebrations.
- **Pro Bono Matters:** CILA has a [quarterly newsletter](#) to share resources and trainings with pro bono attorneys and those interested in following CILA's work.

EMERGENCY SHELTERS

CILA is available to provide training to legal service providers and volunteers at emergency shelters for unaccompanied children nationwide when the need arises. CILA has provided these services multiple times in the past based on the specific needs and gaps present during those moments in time.

CILA WORKING GROUPS & LISTSERVS

CILA hosts six working groups which meet virtually and create spaces for advocates from around Texas and the nation to connect with each other, share on-the-ground trends, and receive updates on major changes in the law. We host quarterly meetings for six different issue areas: (1) special immigrant juvenile status (SIJS), (2) Houston SIJS, (3) children's asylum law, (4) detained unaccompanied children, (5) social services, and (6) pro bono coordination. Attorneys and staff at legal service providers, pro bono attorneys, and private attorneys are all encouraged to participate in one or more of the working groups. CILA also hosts four listservs on different topics: (1) Houston SIJS, (2) Texas children's immigration, (3) social services, and (4) pro bono coordination. To learn more about our working groups or to join one of CILA's listservs, visit CILA's webpage on [community](#).

TECHNICAL ASSISTANCE

CILA provides individualized technical assistance (TA) to advocates across the nation relating to specific case questions and issues. Legal TA questions may relate to a variety of issues including the theory of the case, legal strategy, impacts of recent changes in law and policy, as well as procedural and evidentiary issues. Social services TA requests may relate to best practices for working with children and survivors of trauma, legal-social services program guidance, and community resources to assist in meeting youth's medical, housing, and/or educational needs. Advocates can submit both [legal and social services TA requests](#) on CILA's website.

B. How to Use this Guide

This Guide is intended to provide background and key information for pro bono attorneys representing children and youth in immigration cases. The legal definition for immigrant youth facing removal from the United States alone is "unaccompanied alien child."¹ We follow the ABA's lead in using the term "unaccompanied child," to avoid dehumanizing these youth. The term unaccompanied child refers to a range of ages and developmental levels. Unaccompanied children can be toddlers, tender-age, preteen, teenagers, adolescents, and even young adults depending on their age of arrival in the United States and the length of their immigration case. The Guide is designed to provide introductory information and links to webinars and additional resources to explore for more detailed training.

¹ See Section II.A. of the Guide for more on the legal definition of an unaccompanied child.

The Guide covers essential advocacy skills that go beyond the black letter of the law and has an emphasis on practical tips to help you navigate your pro bono representation. Additionally, [Section III](#), relating to Common Forms of Relief provides more detail regarding the most common claims for youth, which include asylum, withholding of removal, and protection under the Convention Against Torture (CAT), as well as special immigrant juvenile status (SIJS), U nonimmigrant status and T nonimmigrant status (U and T visas), family-based petitions, and Violence Against Women Act (VAWA) petitions. [Section III](#), of the Guide also covers how to apply for adjustment of status after receiving SIJS.

Immigration law is complex. This resource is not intended to be a comprehensive overview of everything potentially applicable to your case, nor is this Guide a replacement for your own research and study of the relevant issues and law involved in your case and jurisdiction. Our hope is that the Guide provides a solid starting point as you begin your pro bono representation.

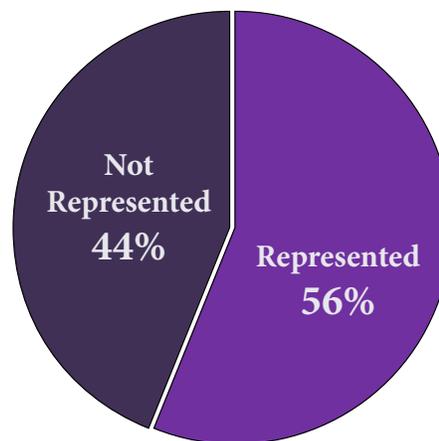
What Is the Need for Pro Bono Representation of Children?

Unfortunately, children in immigration court are not entitled to free appointed legal counsel or best interest advocates like children in the juvenile or child welfare systems in the United States. Many children and youth are facing removal alone.

The Executive Office for Immigration Review (EOIR) (immigration court) provides some data regarding pending unaccompanied children's cases. EOIR data through November 2025 shows that 35,691 unaccompanied children's cases are pending in immigration court.² As of March 2024, EOIR reported representation rates for unaccompanied children as 56% for pending cases showing that thousands of unaccompanied children are facing deportation alone.³

[Transactional Records Access Clearinghouse \(TRAC\) Immigration](#), Syracuse University's data tool, previously tracked information regarding [unaccompanied juveniles'](#) cases in removal proceedings.⁴ Review of historic data has documented the significant difference representation has on case outcomes for individuals in immigration proceedings.⁵ Additionally, there is a need for more current and specific data related to unaccompanied children's cases in immigration courts across the country. For example, it would help to

HOW MANY UNACCOMPANIED CHILDREN WITH PENDING CASES HAVE REPRESENTATION IN IMMIGRATION COURT?



² Executive Office for Immigration Review (EOIR), *Adjudication Statistics: Pending Unaccompanied Alien Child (UAC) Cases* (Nov. 18, 2025), <https://www.justice.gov/eoir/media/1344946/dl?inline>.

³ Congressional Research Service (CRS), *U.S. Immigration Courts: Access to Counsel in Removal Proceedings and Legal Access Programs* (Aug. 6, 2024), <https://www.congress.gov/crs-product/IF12158>.

⁴ Transactional Records Access Clearinghouse (TRAC) data regarding unaccompanied juveniles in immigration court proceedings from 2005 to 2017 covers 293,179 cases, and of those, 62,128 cases were pending. TRAC Immigration, *Juveniles – Immigration Court Deportation Proceedings*, Syracuse University, <https://tracreports.org/phptools/immigration/juvenile/> (last visited Dec. 12, 2025). TRAC stopped posting updated data regarding juveniles and removed data after 2017 as a result of alleged flaws in EOIR's data. TRAC Immigration, *Immigration Court's Data on Minors Facing Deportation is Too Faulty to Be Trusted*, Syracuse University (Dec. 2, 2021), <https://tracreports.org/immigration/reports/669/>.

⁵ American Immigration Council (AIC) reviewed data over a six-year period (2007 to 2012) and determined: "Represented immigrants were more likely to have their cases terminated, to seek relief from removal, and to obtain the relief they sought. In fact, detained immigrants with counsel, when compared to detained immigrants without counsel, were ten-and-a-half times more likely to succeed; released immigrants with counsel were five-and-a-half times more likely to succeed; and never detained immigrants with counsel were three-and-a-half times more likely to succeed." *Access to Counsel in Immigration Court*, AIC (Sept. 2016), https://www.americanimmigrationcouncil.org/wp-content/uploads/2025/04/access_to_counsel_in_immigration_court.pdf.

have data with information per jurisdiction, more data regarding representation numbers, and a variety of potential outcomes for unaccompanied children's cases.

A fact sheet created by the Vera Institute of Justice, *Representation Matters: No Child Should Appear in Immigration Proceedings Alone*, states:

With assistance of counsel, the odds of being ordered to leave the country decrease substantially. From FY 2005-2017, unaccompanied children with legal representation at some point during their cases were more than seven times more likely than unrepresented unaccompanied children to receive an outcome that allowed them to remain in the United States.

This data is based on TRAC's database. Vera's report also covers other benefits of representation including high court appearance rates and a positive impact on children's lives.⁶

A Vera Institute of Justice [data tool](#) from July 2025 shares some statistics regarding adult and children's immigration cases. The report states, "Of the more than **450,000 people who were ordered removed** in immigration court over the past 12 months, **75 percent lacked legal representation**" showing the great need for legal counsel.⁷ Additionally, "More than **900,000 children were facing deportation** in immigration court in the past 12 months. Over **66 percent of these children had no attorney**."⁸

The number of unaccompanied children who enter the country each year varies, and sometimes there are periods with more youth arriving. The need for representation remains even in periods with less youth arriving due to the complexity of their cases, length that they take, and fact that there has always been a gap in legal representation. The limited funding available for legal services for unaccompanied children has faced significant uncertainty, including termination leaving thousands of children at risk of losing their attorney.⁹

Children are facing removal in immigration courts across the United States, including in a community near yours. We must find a way to elevate the voices of these youth by providing representation. Children should not be alone in this process.

There are many barriers to obtaining representation for children facing removal in immigration proceedings. Federal funding, authorized by the Homeland Security Act of 2002¹⁰ and the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA),¹¹ provides legal orientations and screenings for children who are in the custody of the Office of Refugee Resettlement (ORR), under the Department of Health and Human Services (HHS), along with representation while they are detained.¹²

6 Rebecca DiBennardo, Alyssa Snider, *Representation Matters: No Child Should Appear in Immigration Proceedings Alone*, Vera Institute of Justice (Dec. 2021), <https://www.vera.org/downloads/publications/representation-matters.pdf>.

7 *Immigration Court Legal Representation Dashboard*, Vera Institute of Justice (July 2025), <https://www.vera.org/ending-mass-incarceration/reducing-incarceration/detention-of-immigrants/advancing-universal-representation-initiative/immigration-court-legal-representation-dashboard>.

8 *Id.* Note that this data reflects all immigrant children's cases, not just those who are considered unaccompanied children.

9 Litigation on funding for representation of unaccompanied children is currently pending in the Northern District of California. Read about *Department of Health & Human Services (CLSEPA v. HHS)* [here](#) and see additional details from [ImmDef](#) and [Justice Action Center](#), plaintiffs in the matter. See also *Unaccompanied Immigrant Children's Program Faces Funding Uncertainty: Call to Action & Know the Difference Representation Makes*, CILA (July 2, 2025), <https://cilacademy.org/2025/07/02/unaccompanied-immigrant-children-the-difference-representation-makes/>.

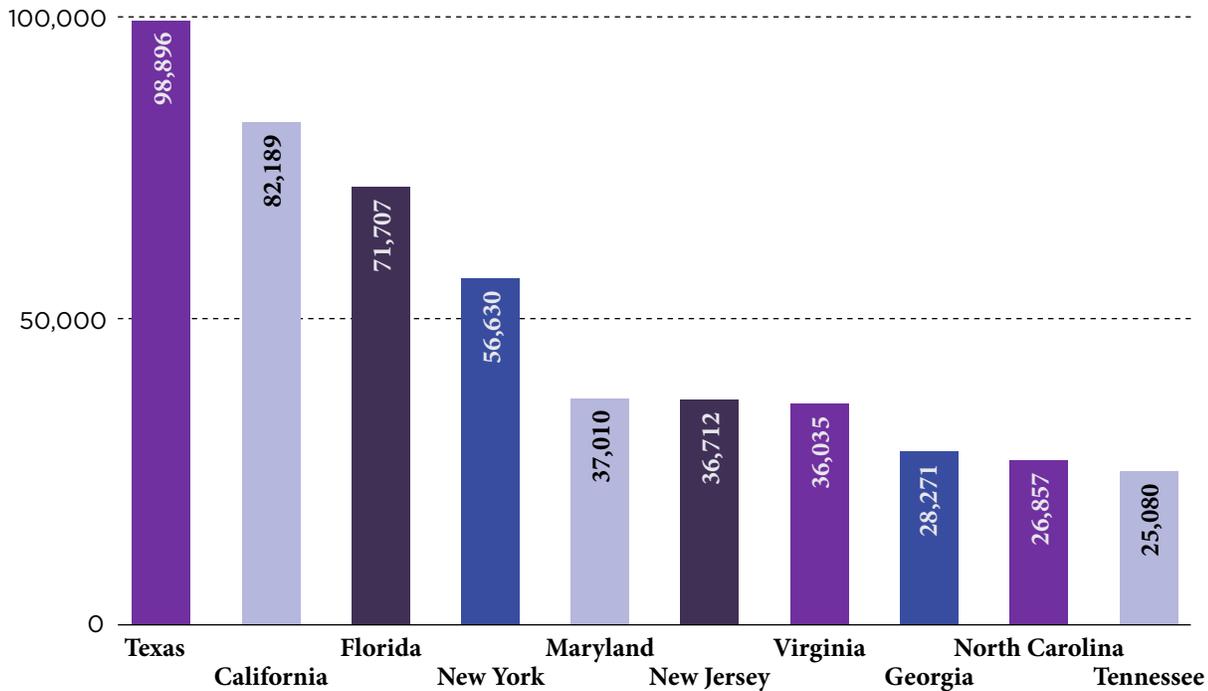
10 Homeland Security Act of 2002, Pub. L. 107-296, 116 Stat. 2135 (Nov. 25, 2002); 6 U.S.C. § 279.

11 William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008), Pub. L. 110-457, 122 Stat. 5044, 5080 (Dec. 23, 2008); 8 U.S.C. § 1232.

12 There have been reports of limitations to children's access to representation while detained. The judge in the *Lucas R. v. Azar* lawsuit [authorized a class](#) of children in the Office of Refugee Resettlement (ORR) in part based on the fact that "ORR blocks lawyers from representing detained children with respect to placement, non-consensual administration of psychotropic medications, or release to available custodians notwithstanding that Congress has allocated funds specifically to provide such lawyers to represent children who are or have been in ORR custody in 'legal matters,' including issues related to ... [placement in the least-restrictive setting]." In November 2023, the parties announced settlements on the issues of legal representation, psychotropic medication, and disability rights, and they were approved by the court in May 2024. The settlements and more information can be found on the National Center for Youth Law's [webpage](#).

Many youth, however, are released from ORR care to a sponsor somewhere in the United States and are set for hearings at immigration courts in their communities, where it becomes their or their sponsor’s responsibility to find and pay for immigration counsel.

TOP TEN STATES RECEIVING CHILDREN IN COMMUNITY



Unaccompanied Children Released to Sponsors by State, U.S. HHS ORR, Total Numbers (October 16, 2025), <https://www.acf.hhs.gov/orr/grant-funding/unaccompanied-children-released-sponsors-state>.

Although children may have spoken to a lawyer while they were in detention, there is no guarantee of representation in the community where they are released, especially if they are released to a different area than where they were detained.¹³ Additionally, many parts of the country do not have legal service providers that represent youth for free or low cost, or who are able to provide support to pro bono attorneys to help kids released in their areas.¹⁴ This means oftentimes youth are not represented upon release from detention, unless a pro bono attorney is willing to take the case.

We thank you for your time and effort in your pro bono representation. We hope this Guide helps equip you with the knowledge and tools needed to effectively advocate for your child client.

¹³ Learn more about access to counsel in immigration court. CRS, *U.S. Immigration Courts: Access to Counsel in Removal Proceedings and Legal Access Programs* (Aug. 6, 2024), <https://www.congress.gov/crs-product/IF12158>.

¹⁴ For a list of free or low-cost legal services, search this directory by state or zip code. See ImmigrationLawHelp.org, <https://www.immigrationlawhelp.org/> (last visited Oct. 28, 2025). EOIR, *List of Pro Bono Legal Services Providers*, <https://www.justice.gov/eoir/list-pro-bono-legal-service-providers> (updated Sept. 10, 2025).

Learn More About Representing Children & Youth in Immigration Cases & How to Get Involved

- Read the ABA Commission on Immigration's (COI) resource *Unaccompanied Minors in Immigration Court: The Critical Role of Legal Representation*.
- Review the Vera Institute of Justice's *Immigration Court Legal Representation Dashboard* with national and state-level data on representation of those in deportation proceedings.
- Review CILA's handout *Ways To Get Involved To Help Immigrant Children & Youth*.
- Watch CILA and the South Texas Pro Bono Asylum Representation Project's (ProBAR) co-created fourteen-minute [video](#) *Standing with Children: Unaccompanied Children and the Need for Pro Bono Representation* to learn more.
- Watch the ABA COI's [video](#), *Tu Futuro, Tu Voz*, a fourteen-minute inspiring video made by youth for youth. The video features four individuals who were previously detained and fighting their immigration cases as minors. Today, as adults and as U.S. permanent residents or citizens, they explain what they went through and why they chose to trust in the legal services offered to them. Creating this video was the idea of one of the individuals featured.
- Watch CILA's *Escuche Mi Voz*, a seventeen-minute [video](#) telling the story of three young adults who entered the United States as unaccompanied children. They have some advice to share with youth as well as the advocates who work with them.

CILA has many resources available to support you in your pro bono representation, including this Guide and other materials on CILA's [website](#). Learn more about CILA in Section I.A. of this Guide.



AMERICAN BAR ASSOCIATION

CILA Children's Immigration Law Academy



GET INVOLVED

CILA hosts a platform called Pro Bono Matters for Children Facing Deportation on CILA's website. The platform works similarly to a bulletin board. The platform is a place for nonprofit legal service providers who work with children and youth in immigration matters to post pro bono opportunities in need of assistance. Interested lawyers and advocates can search and share available pro bono cases and opportunities. We welcome you to get involved and express interest in a case on the platform.



Sign up to receive CILA's quarterly e-newsletter for pro bono attorneys and others who want to follow our work: Pro Bono Matters



Visit CILA's website to learn more about how you can get involved.



SECTION II.

II. EFFECTIVE REPRESENTATION

A. Working with Unaccompanied Children

The migration of children and adolescents is not a new phenomenon and is not unique to the United States. According to the United Nations, there were 281 million international migrants worldwide in 2022, and of those, 41 million were below the age of 19.¹⁵

The number of unaccompanied children entering the United States has changed in waves over time with higher numbers of unaccompanied children entering the United States at the southwest border in FY 2021, 2022, and 2023.¹⁶ There are likely many reasons for this, including dangerous conditions or abusive situations in their home countries, natural disasters, the COVID-19 pandemic, and U.S. policies limiting many from seeking humanitarian relief abroad.¹⁷ The number of encounters at the U.S. borders has varied according to data from the U.S. Department of Homeland Security (DHS) Customs and Border Protection (CBP).¹⁸

Learn About Unaccompanied Children in Your Area

ORR releases data regarding unaccompanied children released to sponsors per [state](#) and [county](#). View the Migration Policy Institute's [interactive tool](#) regarding data: *Unaccompanied Children Released to Sponsors by State and County, FY 2014-Present*.

Unaccompanied Child Definition

An “unaccompanied alien child” is a child who enters the United States without a valid entry document and who was not accompanied by a parent or legal guardian. An unaccompanied child is defined by the Homeland Security Act of 2002 and the TVPRA as an individual (a) under eighteen years of age; (b) without lawful immigration status; and (c) with no parent or legal guardian in the United States available to provide care and physical custody.¹⁹

DEMOGRAPHICS OF UNACCOMPANIED CHILDREN

The majority of unaccompanied children have been migrating to the United States from Guatemala, Honduras, and El Salvador, but the number of children migrating from other countries has increased recently.²⁰ Although not the majority, an increased number of unaccompanied children seeking protection in the United States arrived from Afghanistan in 2021 with the fall of the country to the Taliban and from

15 International Organization for Migration, *World Migration Report 2024*, United Nations, <https://worldmigrationreport.iom.int/msite/wmr-2024-interactive/> (last visited Sept. 12, 2025).

16 View the April 2021 [webinar](#) hosted by the American Bar Association (ABA) *Unaccompanied Children at the Border: Get the Facts from the Experts* to learn more.

17 See Leila Miller, *Which countries send migrants to the U.S. border, and what are they fleeing?*, Los Angeles Times (Apr. 3, 2023), <https://www.latimes.com/world-nation/story/2023-04-03/what-countries-send-most-migrants-to-us-border-what-are-they-fleeing>.

18 Department of Homeland Security (DHS) U.S. Customs and Border Protection (CBP), *Nationwide Encounters*, <https://www.cbp.gov/newsroom/stats/nationwide-encounters> (last modified Sept. 19, 2025).

19 TVPRA 2008, Pub. L. 110-457, 122 Stat. 5044, 5080 (Dec. 23, 2008); 8 U.S.C. § 1232. Homeland Security Act of 2002, Pub. L. 107-296, 116 Stat. 2135 (Nov. 25, 2002); 6 U.S.C. § 279.

20 See ORR, *Data* (Oct. 15, 2025), <https://acf.gov/orr/about/ucs/facts-and-data>.

Ukraine in 2022 due to the war with Russia.²¹ Teenage boys are the largest demographic, although younger children and girls migrate, too.²²

Children migrate for a variety of reasons and often for multiple reasons, including uncontrolled violence in home countries, corruption, impunity, family-based violence, gender-based violence, and gang-related violence.²³

What Happens When Unaccompanied Children Arrive in the United States?

Most often, children are apprehended by CBP upon entry into the United States and taken into holding facilities where they are questioned and temporarily detained. CBP officers record their interview notes on Form I-213, *Record of Deportable/Inadmissible Alien* and issue a Notice to Appear (NTA), an official charging document, asserting any violations of immigration law against the children. Officers should also serve Form I-770, *Notice of Rights and Disposition* when the child is apprehended.

Unaccompanied children from contiguous countries (i.e., children from Mexico and Canada) must be screened within 48 hours of apprehension for claims of persecution, trafficking, and fear of trafficking, as well as willingness to withdraw their application and voluntarily return home.²⁴ Voluntary returns must be processed within 48 hours. If the government determines that a child from a contiguous country is a victim of human trafficking or has a fear of returning to their home country or country of last habitual residence, the child will be transferred to the care and custody of ORR and placed in standard removal proceedings.²⁵ Under the TVPRA, unaccompanied children from non-contiguous countries should be transferred from DHS custody to ORR generally within 72 hours.²⁶ The TVPRA does not contemplate that children from non-contiguous countries must be screened for a fear of persecution or trafficking before being transferred to the care and custody of ORR. However, children from non-contiguous countries can seek withdrawal of admission or voluntary departure while being processed.²⁷

There have long been concerns about abuse, overcrowding, and abhorrent conditions in border patrol facilities. Recent reports continue to raise concerns about the detention conditions for migrant youth.²⁸ Some advocates issued a report detailing ongoing abuses of unaccompanied children at CBP facilities.²⁹ Prior examples of concerns being raised about border patrol facilities include the deaths of migrant

21 See Kristina Cooke, Mica Rosenberg, and Lindsey Wasson, *Insight: 'When are my parents coming?' - 1,300 Afghan children evacuated to U.S. in limbo*, Reuters (Nov. 10, 2021), <https://www.reuters.com/world/when-are-my-parents-coming-1300-afghan-children-evacuated-us-limbo-2021-11-10/>. Field Guidance #19 – *Unaccompanied Afghan Minor Processing*, ORR (Sept. 4, 2021, revised Jan. 6, 2023), <https://acf.gov/sites/default/files/documents/orr/fg-19-uam-processing-rev-11-9-21.pdf>. Camilo Montoyo-Galvez, *Ukrainian children in U.S. custody find unlikely sponsors as war rages back home*, CBS News (May 4, 2023), <https://www.cbsnews.com/news/ukrainian-children-us-custody-sponsors/>.

22 See ORR, *Data* (Oct. 15, 2025), <https://acf.gov/orr/about/ucs/facts-and-data>. See also U.S. Department of Health and Human Services (HHS), *Unaccompanied Children Information*, <https://www.hhs.gov/programs/social-services/unaccompanied-children/index.html> (last reviewed Apr. 24, 2025).

23 See Paulina Villegas, *Detentions of Child Migrants at the U.S. Border Surges to Record Levels*, N.Y. Times (Oct. 29, 2019), <https://www.nytimes.com/2019/10/29/world/americas/unaccompanied-minors-border-crossing.html>. CRS, *Central American Migration: Root Causes and U.S. Policy* (Dec. 12, 2022), <https://crsreports.congress.gov/product/pdf/IF/IF11151>. View CILA's webinar *A Deep Dive Into Current Conditions in El Salvador, Guatemala, & Honduras with the Experts* and CILA's webinar *Children's Asylum & Gang-Related Claims* to learn more.

24 Unaccompanied children from contiguous countries are processed differently than other unaccompanied children. See TVPRA 2008, Pub. L. 110-457, 122 Stat. 5044, 5080 (Dec. 23, 2008).

25 *Id.*

26 TVPRA 2008, Pub. L. 110-457, 122 Stat. 5044, 5080 (Dec. 23, 2008). There is an exception to the 72-hour requirement during “exceptional circumstances.”

27 See INA § 240B; 8 U.S.C. § 1229c (voluntary departure). The H.R.1 (“One Big Beautiful Bill”) that went into effect in July 2025 contains provisions related to unaccompanied children that the government has indicated it may intend to interpret in a way that could change how unaccompanied children from non-contiguous countries are processed at the border. Advocates have reported an increase in children seeking withdrawal of admission since the bill went into effect.

28 E.g., Patricia Caro, *‘They treat us as if we weren’t human’: Migrant minors denounce deplorable conditions in US detention centers*, El Pais (Aug. 4, 2025); *The Truth About Immigration Detention in the United States*, Vera Institute of Justice (June 11, 2025), <https://www.vera.org/news/the-truth-about-immigration-detention-in-the-united-states>.

29 *Immigration Advocates File Complaints Protesting the Treatment of Children in CBP Custody*, FIRRP (Sept. 12, 2024), <https://firrp.org/florence-project-and-immigrant-defenders-release-alarming-new-reports-detailing-abuse-of-unaccompanied-immigrant-children-in-border-patrol-custody/>.

children in federal custody in 2023,³⁰ overcrowding and the use of inadequate emergency facilities in 2021,³¹ and years of abhorrent conditions for adult and children facilities that have shocked the consciousness of many Americans.³²

Unaccompanied children are entitled to speak to an immigration judge in removal proceedings. Under the TVPRA, unaccompanied children should be placed in proceedings pursuant to § 240 of the INA and are not subject to expedited removal.³³ This has been an important protection recently with the increasing use of expedited removal to process noncitizens at the border and further in the United States interior.³⁴

Immigration and Customs Enforcement (ICE) will file the NTA with the immigration court, initiating removal proceedings against the child. After the NTA is filed, the immigration court should mail out hearing notices with required court dates for the child to attend court. These procedural steps are often missed or lacking in due process. Specifically, ICE may fail to file the NTA with the court or fail to serve Form I-770 in accordance with relevant immigration regulations. It is also common to find incorrect, incomplete, or inadequate information on a child's I-213. See [Section IV.C.](#) to learn more about immigration court.

Once in ORR's care, the agency should work to place the youth with a sponsor to facilitate reunification, commonly with a parent or other family member. If there is no option to reunify with a sponsor, the child may remain in ORR care via transfer to a long-term foster care (LTFC) and/or unaccompanied refugee minor (URM) program if the child qualifies for immigration relief.³⁵ Children who do not qualify for immigration relief and have no reunification option are repatriated to their home country. ORR shelters are spread across the United States with a large concentration found in the Rio Grande Valley along the border of Texas with Mexico. At ORR,

Learn More About Unaccompanied Children at the Border

Read the [ABA CILA Fact Sheet: Unaccompanied Children at the Border](#) and the ABA's Commission on Immigration's [Primer: Immigration Enforcement Mechanisms at the U.S. Border](#).

Learn More About Unaccompanied Children in Immigration Detention

Check out CILA's FAQs: [Who Regulates the Detention of Children Facing Deportation?](#)

Learn More About Unaccompanied Children's Rights After Being Released

Review and share with clients CILA's [Protections & Information for Unaccompanied Children and Youth](#) available in [English](#) and [Spanish](#)

30 *Children Will Continue to Die in Immigration Jails if We Don't Change Course*, Young Center for Immigrant Children's Rights (May 21, 2023), <https://www.theyoungcenter.org/press-releases/children-will-continue-to-die-in-immigration-jails-if-we-dont-change-course/>; Nina Lakhani, *Eight-year-old girl dies after being detained by border patrol in Texas*, *The Guardian* (May 18, 2023), <https://www.theguardian.com/us-news/2023/may/18/eight-year-old-girl-dies-detained-border-patrol-texas>.

31 Mica Rosenberg and Go Nakamura, *Thousands of migrant kids stuck in U.S. border patrol custody, again*, *Reuters* (Mar. 8, 2021), <https://www.reuters.com/world/americas/thousands-migrant-kids-stuck-us-border-patrol-custody-again-2021-08-03/>; Shaw Drake and Kate Huddleston, *Border Patrol Must Stop Holding People in an Inhumane Outside Pen Under a Highway in South Texas*, *ACLU* (Aug. 9, 2021), <https://www.aclu.org/news/civil-liberties/border-patrol-must-stop-holding-people-in-an-inhumane-outside-pen-under-a-highway-in-south-texas>; Adolfo Flores, *Detained Immigrant Teens Feel Desperate And Hopeless At Emergency Shelters, Attorneys Say*, *BuzzFeed News* (Aug. 9, 2021), <https://www.buzzfeednews.com/article/adolfoflores/immigrant-youth-er-shelters>.

32 E.g. Simon Romero, Zolan Kanno-Youngs, Manny Fernandez, Daniel Borunda, Aaron Montes, and Caitlin Dickerson, *Hungry, Scared and Sick: Inside the Migrant Detention Center in Clint, Tex.*, *N.Y. Times* (July 6, 2019), <https://www.nytimes.com/interactive/2019/07/06/us/migrants-border-patrol-clint.html>; Keegan Hamilton, *Kids Allege Medical Neglect, Frigid Cells, and Rotten Burritos in Border Detention*, *VICE News* (May 2, 2022), <https://www.vice.com/en/article/93b4vv/border-patrol-abuse-migrant-children>.

33 See [Section IV.C.](#) to learn more about immigration court and a resource developed by CILA, ILRC, and NIPNLG, [Expedited Removal and Unaccompanied Children: An FAQ](#).

34 For more information about the 2025 changes to expand expedited removal, review the National Immigration Forum's [Fact Sheet: Expanded Expedited Removal](#).

35 In June 2021, [ORR Field Guidance #18](#), eligibility for long-term foster care placement expanded to those without legal immigration relief.

a child goes through an assessment involving a biographic intake, medical exam, and mental health evaluation. When they turn 18 years old, youth age out of ORR care and may be released on their own recognizance or transferred to ICE detention to be detained with adults.³⁶

After being released, unaccompanied children in removal proceedings must continue to attend their immigration court hearings. Some youth will be eligible for post-release services provided by the government.³⁷ Recently, the ICE Homeland Securities Investigation (HSI) along with agents from the FBI and Drug Enforcement Agency (DEA) have been conducting “wellness checks” as part of ongoing immigration enforcement efforts. If these “wellness checks” continue, it is important to warn youth about what to expect and advise them of their rights if the agents do visit their homes.³⁸

Attacks on the Legal Protections for Unaccompanied Children

Kids in Need of Defense (KIND) created a [timeline](#) that summarizes how the federal government has been rolling back protections for unaccompanied children since the start of the new administration in January 2025. Advocates continue to push back on these changes. Some of these issues are discussed in this Guide, but it is important to check for updates especially since immigration law and policy can change rapidly.

Foundational Sources of Law Impacting Unaccompanied Children’s Rights

SOURCE OF LAW	NOTES
ORR Foundational Rule 45 C.F.R. Part 410	<ul style="list-style-type: none"> 2024 regulations that govern the care and custody of unaccompanied children in ORR custody and purported to implement the terms of the <i>Flores</i> settlement agreement. Review CILA’s Overview of the ORR Foundational Rule for the Unaccompanied Children Program for details about what is included in the regulations.
Flores Settlement Agreement	<ul style="list-style-type: none"> Landmark agreement in class action litigation that was signed in 1997 and set the standards for the detention, release, and treatment of minors in immigration custody. Continues to govern the care and custody of children at CBP facilities and those detained with their families in ICE facilities. There have been ongoing efforts to ensure enforcement and compliance with the settlement. Check the National Center for Youth Law’s webpage, Enforce the Flores Settlement Agreement, for more information and litigation updates.

³⁶ There is ongoing litigation in *Garcia Ramirez v. ICE* related to the transfer of youth to ICE detention upon turning 18 years old. Read the [Frequently Asked Questions \(FAQ\)](#) from class counsel in the case for more information and to further understand the impact of the case (updated Feb. 2025). Learn more about the case on NIJC’s [website](#) and AIC’s [website](#). See Section IV.C. View CILA’s [webinar](#), *Working with Unaccompanied Children Aging Out*, for more information.

³⁷ Review the ORR Unaccompanied Children Bureau Policy Guide: Section 6 on *Post-Release Services* and CILA’s [resource](#) on post-release services.

³⁸ See *Trump Administration’s So-Called “Wellness Checks” of Unaccompanied Immigrant Children Harm Children and Families*, Young Center for Immigrant Children’s Rights (May 14, 2025), <https://www.theyoungcenter.org/press-releases/trump-administrations-so-called-wellness-checks-of-unaccompanied-immigrant-children-harm-children-and-families/>.

SOURCE OF LAW	NOTES
<p>Homeland Security Act of 2002</p> <p>Codified as to ORR at 6 U.S.C. § 279</p>	<ul style="list-style-type: none"> • Transferred the responsibility of custody of unaccompanied children from “legacy” INS to ORR • Led to the creation of the child advocate program: “ensuring that the interests of the child are considered in decisions and actions relating to the care and custody” • Defined “unaccompanied alien child”
<p>William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008</p> <p>Codified at 8 U.S.C. § 1232</p>	<ul style="list-style-type: none"> • Asylum protections for unaccompanied children: (1) safe third country bar does not apply to unaccompanied children; (2) one-year filing deadline does not apply to unaccompanied children; (3) initial jurisdiction of an unaccompanied child’s application is with a USCIS asylum officer • Created separate process for children from contiguous countries • Provides for the safe repatriation of children • Additional requirements for the care and custody of unaccompanied children as well as safety and suitability assessments for custodians • Placement of unaccompanied children in INA § 240 removal proceedings, which means they cannot be placed in expedited removal • Covers access to counsel for unaccompanied children • Includes information on child advocates • Expanded eligibility for special immigrant juvenile status (SIJS)

Sample Checklist of What to Do Before Your First Client Meeting

- The *CILA Practice Toolkit* contains general guidance and tips for those who may be new to working on immigration matters and includes an accompanying resource with checklists, cheat sheets, and organizational preparation documents to help advocates stay organized and get prepared for a case.
- Review the information you have in the client file.
- If you are working with a nonprofit organization as a pro bono attorney, review all materials provided by the nonprofit organization.
- Do some research regarding the country your client is from so you have some background and context. Consider how you plan to represent the child with cultural competency and with a trauma-informed approach.
- Learn more about cultural competency with CILA’s resource *Cultural Competency and Humility When Representing Unaccompanied Children*.
- Learn more about working with survivors of domestic violence and child abuse, trauma-informed lawyering, and interviewing techniques in [Sections II.B–C](#) of this Guide.

- Consider case strategy and summarize your client's options.
 - This may require some legal research and familiarization with your client's immigration options. The resources in this Guide should provide some background and a starting point to get to know the relevant law.
 - Think about how you will explain this information and the immigration process to your client in language appropriate to your client's age and developmental stage.
 - Use a case strategy matrix or other tool to help keep track of legal and factual elements. CILA has case theory and evidence matrix charts for [SIJS](#) and [asylum](#) posted on CILA's website.
- Prepare any documents you will need signed at your first meeting including any documents you will need to request additional records. See [Section IV.C.](#) for more information and resources on seeking records and conducting FOIAs.
- Draft a list of questions to ask your client based on your case file review and initial case strategy.
- Create a meeting agenda taking into consideration your trauma-informed stance. Review the sample first meeting checklist below for ideas.
- Offer the client a choice in meeting times among those you have available and make sure the client has directions and a plan for transportation, parking, childcare, etc. during the meeting. When working with a child client, you may often be communicating with a parent or caregiver about some of these details. However, many adolescent and teenage clients can communicate and arrange meetings as well, and it is empowering to give them a voice in the process.
- Be sure to arrange an interpreter, if needed, for your meeting whether in person or through a telephonic interpretation system, as appropriate. See [Section II.D.](#) for tips regarding working with an interpreter.
- Check in with the client the day before the meeting to make sure they have all of the information they need to be present at the meeting.
- Make sure any office staff knows to expect them in person or possibly receive a phone call if they are having trouble finding the office, and that other staff has a trauma-informed stance as well.

Sample Checklist for Your First Client Meeting

- Remember your trauma-informed stance: start by building rapport and giving your client signals of warmth and safety. Review CILA's resource [Tips for Working with Migrant Children and Trauma-Informed Lawyering](#) to learn more how to practice with a trauma-informed stance. Consider bringing items to break the ice, like music, games, coloring books, or toys. You may also want to bring fidget toys, such as playdough or bubble wrap, that can be used during the meeting.
- Be curious: try to get to know your client and connect on a more personal level. Ask about your client's interests, daily life, etc.
- Remember that the client may have never met a lawyer before or been provided a voice in this process, and that their cultural context for law enforcement, lawyers, and adults may be different than yours.
- Be patient and kind, and practice empathetic listening skills. See [Section II.C.](#)
- Introduce anyone in the room, including interpreters, associates, legal staff, or interns.

- Review what you are going to be talking about in the meeting and how long it will last, and let the client know that they can ask for a break at any time to use the restroom or get some water.
- Review your role.
 - This is a good time to ensure your client knows you are there to help.
 - Discuss your duties of confidentiality to help put your client at ease. Do not forget to go over any exceptions to confidentiality that may exist in your jurisdiction. For example, in Texas all professionals including attorneys are mandatory reporters of child abuse.
 - If you have a computer or are going to take notes, explain why and let the child know the rules about confidentiality apply to the notes as well.
 - Remind the client that you do not work for the government, the court, the ORR shelter, or anyone other than them.
- Set clear expectations—what your client can expect and what you expect from your client, including any client obligations (being honest, appearing for court, etc.). For example, *see* [Section IV.C.](#) for your client’s obligations while in removal proceedings.
- Review the file and information you have already received with your client.
- Discuss strategy options, including any pertinent deadlines.
- Emphasize the need to stay in communication, and make sure you have the best contact information for your client and alternative methods of contact. Be sure to provide your client with the best way to contact you and your contact information.
- Sign documents.
- Make a plan for next steps in the case. Sometimes it helps to write down any key next steps such as the next meeting date, hearing information, or a list of information you are asking your client to gather for you.
- Try to end the interview on a lighter note, away from the substance of the meeting. If the client was emotional or had to discuss anything hard to talk about, remind them of their strength and bravery. This will help your client transition into the rest of their day.

Know Your Rights

Review with your client their rights if they are stopped by the police, ICE, or other law enforcement. Additionally, your client may need this information in case their family or sponsor are picked up by ICE. Several organizations have great Know Your Rights (KYR) resources.

- [KYR](#) wallet cards issued by Immigrant Legal Resource Center (ILRC)
- [KYR](#) immigrants' rights issued by American Civil Liberties Union (ACLU)
- [KYR](#) for children and youth issued by National Immigrant Justice Center (NIJC)
- [KYR](#) information issued by Kids in Need of Defense (KIND)
- [KYR](#) information in Maya Mam issued by the International Mayan League

Filing a Complaint with the Department of Homeland Security

If a DHS employee (i.e., a CBP or ICE officer or U.S. Citizenship and Immigration Services (USCIS) adjudicator) violated your client's rights, your client may want to consider reporting the misconduct to the [DHS Office of Inspector General](#) or by making a civil rights complaint with the or [DHS Office for Civil Rights and Civil Liberties \(CRCL\)](#). Additionally, if your client's rights were violated while detained by CBP or ICE, then you or your client may want to file a complaint with the [Office of the Immigration Detention Ombudsman \(OIDO\)](#). Review all complaint options on [DHS's website](#). Also, be aware of [related litigation](#) active at the time of publication. To learn more, view CILA's recorded [presentation, OTIP Requests and Violations of Unaccompanied Children's Rights](#), from October 2025. CILA also highlights complaint processes in two blog posts, [Keeping the Government Accountable: Upholding Civil Rights and Due Process for Unaccompanied Children](#), October 2019, and [Have you Heard of DHS's OIDO?](#), April 2023.

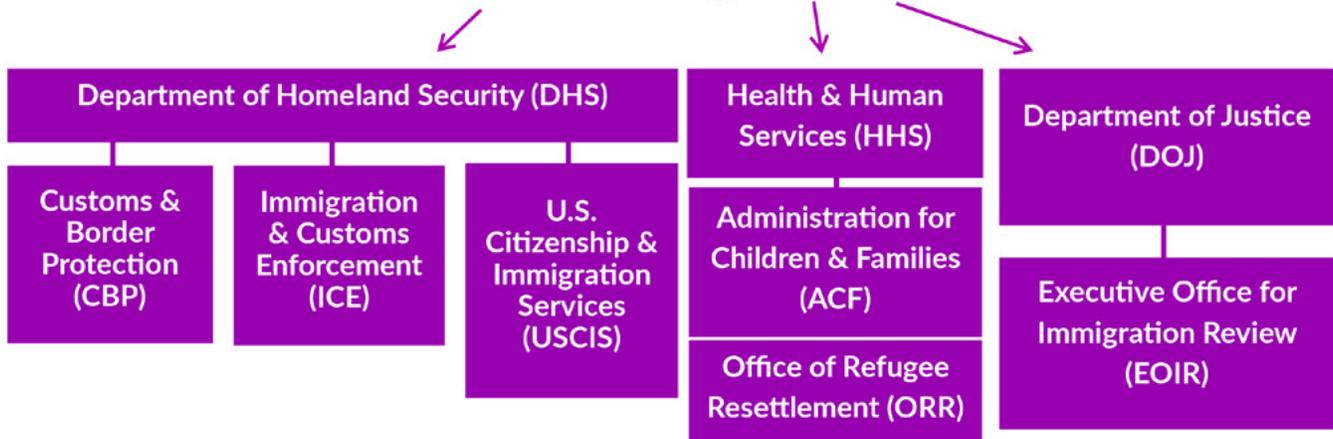
Registration Requirement for Noncitizens

On April 11, 2025, a registration requirement that began during the Trump 2.0 Administration went into effect. Under this requirement, noncitizens who remain in the United States for 30 days or more must register with the U.S. government. This requirement is being used for enforcement purposes and has been criticized as an anti-immigration tactic designed to cause panic and fear. Some noncitizens who are in removal proceedings or who have pending applications for immigration relief with USCIS may already be considered registered and will not be required to take further actions. Others may need to complete [Form G-325R](#) to register. Unaccompanied children may be required to re-register when they turn 14 years old. Attorneys need to be familiar with the registration requirements and check for updates as this area of law may change over time. In addition, be prepared to advise clients on the potential risks associated with completing Form G-325R and the potential consequences for failing to register (which can include referral for criminal prosecution or fines). The following resources have additional information for attorneys and immigrants about registration:

- CILA, [FAQ: Federal Government's New Registration Requirements & Unaccompanied Children](#)
- ILRC, [The New Registration Requirement: Frequently Asked Questions](#)
- ILRC, [Discussing Registration with Clients](#)
- USC Visa Services, [Immigration Update: Mandatory USCIS Foreign National Registration – 30 Days to Register Children.](#)
- American Immigration Lawyers Association (AILA), [Understanding Alien Registration Requirements](#)

Who's Who in the Unaccompanied Children's World

Federal Agencies



State Courts

- State courts of general jurisdiction or specialized courts (family, juvenile) may make judicial determinations related to one form of children's relief—SIJS
- State courts may also be asked to grant conservatorship over unaccompanied children to URM programs
- Many courts have their own local rules you must follow beyond state rules of procedure, evidence, etc.
- Staff include presiding judges, associate judges, judge's clerks and filing clerks, and sometimes interpreters

Note: State courts are not involved in every child's case. They are typically involved when a child is seeking SIJS or has been accepted into ORR's URM program. Or a child may part of state court proceedings that you do represent them—for example, for violations (traffic, criminal, etc.).

Young Center for Immigrant Children's Rights

- Appointed child advocates in specific cases referred by legal service providers, advocates, or ORR
- Independent nonprofit organization, offices nationwide
- Provides best interest recommendations regarding detained unaccompanied children for various stakeholders

For more information about these entities, check out CILA's resources "[Who's Who in the Unaccompanied Children's World? A Guide to Identifying and Working with Stakeholders](#)" and "[Who's Who in the Unaccompanied Children's World? A Visual Guide](#)"

Government Accountability

- DHS: Office of Inspector General (OIG), Office of the Immigration Detention Ombudsman (OIDO), Office for Civil Rights & Civil Liberties (CRCL), CBP Joint Intake Center (JIC) and Office of Professional Responsibility (OPR), & Citizenship & Immigration Services (CIS) Ombudsman Office
- HHS: OIG
- DOJ: EOIR Judicial Conduct and Professionalism Unit

Links to Learn More About WORKING WITH UNACCOMPANIED CHILDREN

- Check out CILA’s 101 [webinar: Introduction to Working with Unaccompanied Children](#) (1 hour, 8 minutes). Access this training and other resources with a [CILA account](#).
- Check out the Congressional Research Service’s [resource](#) to learn about the process unaccompanied children go through upon entry into the United States and which agencies are involved in the process.
- Check out CILA’s guide on stakeholder relations, *Who’s Who in the Unaccompanied Children’s World? A Guide to Identifying and Working with Stakeholders*, January 2024.
- Read the Council on Foreign Relations’ article *U.S. Detention of Child Migrants*, March 2023.
- Review resources from the Coalition to Abolish Slavery and Trafficking (Cast) on [cultural humility](#), including a practice advisory and videos.
- Refer to CILA’s resource on *Bite-Sized Tips for New Practitioners & Pro Bono Attorneys*, which includes 7 tips provided in short [videos](#) and compiled in a [written resource](#), October 2022. The tips will help you get started working with unaccompanied children.
- Learn about some sources to start your research when working with an Indigenous child with CILA’s [Resources for Working with Indigenous Individuals](#), December 2023.
- Read the resource developed by CILA & Loyola’s Center for the Human Rights of Children (CHRC), *Considerations for Tender-Aged Children in Immigration Court Proceedings*, September 2023.

B. Trauma-Informed Lawyering

Working with Survivors of Domestic Violence and/or Child Abuse

Oftentimes, domestic violence and/or child abuse is a common thread of children’s stories. You may hear histories that include children who have suffered abuse by a parent; witnessed abuse between their parents; suffered threats and/or sexual violence in their home country, by gang members for instance; or experienced violence on the journey to or after arriving in the United States. Understanding how these experiences have impacted your client and their families will help you become a better advocate for them.

“Domestic violence (also called intimate partner violence (IPV), dating abuse or relationship abuse) is a pattern of behaviors used by one partner to maintain power and control over another partner in an intimate relationship.”³⁹ Abuse can take many forms including controlling behavior, fear tactics, physical and sexual violence, coercion, threats, emotional or financial abuse, etc.⁴⁰ According to the Children’s Hospital of Philadelphia Research Institute’s Center for Violence Prevention, “[c]hild maltreatment (both abuse and neglect) is often linked with [intimate partner violence], and encompasses any act or failure to act on the part of a parent or caregiver which results in harm to the child, including serious physical or emotional harm, sexual abuse or exploitation, or death.”⁴¹ In addition to child abuse often co-occurring with other domestic violence at home, “[a] child can be an indirect victim of [intimate partner violence] as a witness and still face the serious consequences of the abuse.”⁴²

A common question by outsiders to this work is why a person would stay in a situation where there is domestic violence. It is important to know that the individual facing abuse is in the best position to know

³⁹ *Understand Relationship Abuse*, National Domestic Violence Hotline, <https://www.thehotline.org/is-this-abuse/abuse-defined/> (last visited Oct. 17, 2025).

⁴⁰ *Id.*

⁴¹ *Domestic Violence and Child Abuse*, Children’s Hospital of Philadelphia Research Institute, <https://injury.research.chop.edu/violence-prevention-initiative/types-violence-involving-youth/domestic-violence-and-child-abuse#.Xj-WqzFKiM9> (last visited Oct. 17, 2025).

⁴² *Id.*

when and whether they should leave the situation. It is a complicated decision to make. The [National Domestic Violence Hotline](#) says:

Abusive relationships are extremely complex situations and it takes a lot of courage to leave. Abuse is about power and control. When a survivor leaves their abusive relationship, they threaten the power and control their partner has established over the survivor's agency. This often causes the partner to retaliate in harmful ways. As a result, leaving is often the most dangerous period of time for survivors of abuse.

When working with a child, sometimes due to age or cultural differences, a child may have a different perception of the abuse, and this may be something that has to be defined and explained to the child. Depending on the age of your client, it may be helpful to use [power and control wheels](#) to discuss the issues with your client.⁴³

Many children have suffered abuse and/or neglect in their home country, but if a child is currently in an abusive situation, check in with the child regarding their safety. For example, ask your client questions such as if their phone number is a number where you can leave a voicemail and if your client has a safe place to receive mail. You can also help your client by encouraging them to make a safety plan and working with them to create the plan.⁴⁴

Remember your ethical responsibilities, including in some states, the mandatory duty to report child abuse. See [Section II.E](#). Also keep in mind legal relief such as VAWA and U nonimmigrant status, and ensure you screen for these types of legal relief. See [Sections III.E](#) and [III.F](#). You can share the hotline numbers included in this resource and research other local sources to assist your client.

Childhood abuse and neglect can have short-term and long-term consequences impacting a child physically and mentally.⁴⁵

Toxic stress can be caused by experiencing ACEs [adverse childhood experiences], including child maltreatment. It can change an individual's brain architecture, which can cause the person's stress response system to be triggered more frequently and for longer periods of time and place him or her at an increased risk for a variety of physical and mental health problems, including cardiovascular disease, depression, and anxiety (National Scientific Council on the Developing Child, 2014). Trauma-informed approaches, however can help

Important Resources

[Childhelp National Child Abuse Hotline](#):

1-800-4-A-CHILD (1-800-422-4453)

[National Domestic Violence Hotline](#):

24/7 phone line where advocates are available in 140+ languages
1-800-799-SAFE (7233),
TTY 1-800-787-3224, text
(START to 88788), and chat tool.

[Loveisrespect](#), a resource for teens experiencing dating abuse, that includes a peer advocate 24/7 hotline 1-866-331-9474,
TTY 1-800-787-3224, text
(LOVEIS to 22522), and chat tool.

43 *Why People Stay*, National Domestic Violence Hotline, <https://www.thehotline.org/support-others/why-people-stay-in-an-abusive-relationship/> (last visited Oct. 13, 2025). The [Domestic Abuse Intervention Programs](#) provides several wheel adaptations that could be useful to discuss these issues with your client. Take a look at the various wheels to see what is most relevant to your client's particular situation.

44 View National Domestic Violence Hotline's website with an interactive tool to create a safety plan. *Create Your Personal Safety Plan*, National Domestic Violence Hotline, <https://www.thehotline.org/plan-for-safety/create-your-personal-safety-plan/> (last visited Oct. 17, 2025). *What is a Safety Plan?*, National Child Abuse Hotline (June 18, 2016), <https://www.childhelp.org/wp-content/uploads/2014/07/CH-Safety-Plan.pdf>.

45 *Definitions of Child Abuse and Neglect*, Child Welfare Information Gateway, <https://www.childwelfare.gov/topics/safety-and-risk/definitions-child-abuse-and-neglect/?top=86> (last visited Oct. 17, 2025).

improve outcomes for individuals affected by toxic stress, and there is evidence that social and emotional support (e.g., consistent parenting practices, community supports) can alleviate its effects (U.S. Department of Health and Human Services [HHS], Administration for Children and Families [ACF], 2017).⁴⁶

The effects of the abuse or neglect may impact your representation because it may affect your working relationship with your client, including how or if your client communicates their story with you. You must also assess how the effects of the abuse or neglect will impact their ability to communicate their story with an adjudicator in an interview or hearing and determine your legal strategy accordingly. Frequently, it is necessary to have a forensic evaluation conducted by an expert to fully explain how your client's past impacts their physical and/or mental health. More information and resources regarding forensic evaluations are provided later in this section, as well as in [Section II.C.](#) and [Section III.A.](#)

It is always important to practice self-care when working with clients. Oftentimes, this can be even more important when working with clients who have suffered from domestic violence and/or child abuse in the past or currently. View CILA's webinars, *Caring for Yourself While Advocating for Your Clients: Working with Clients Living with Domestic or Intimate Partner Violence* and *Building Resilience: Tools for Advocates Serving Unaccompanied Children*. Also, check out a [presentation](#) featured at CILA's May 2023 5th Annual Champions for Immigrant Youth Symposium, *Vicarious Trauma: Best Practices for Serving and Honoring Sexual Abuse Victims*.

The Significance of a Trauma-Informed Approach

Many of our clients have experienced past trauma. This could be trauma that occurred in the client's home country, on their journey to the United States, or even once in the United States based on a particular experience, detainment, or separation from family.

Signs of trauma vary person to person and will also depend on your client's age.⁴⁷ According to [The National Child Traumatic Stress Network \(NCTSN\)](#):

[t]raumatic reactions can include a variety of responses, such as intense and ongoing emotional upset, depressive symptoms or anxiety, behavioral changes, difficulties with self-regulation, problems relating to others or forming attachments, regression or loss of previously acquired skills, attention and academic difficulties, nightmares, difficulty sleeping and eating, and physical symptoms, such as aches and pains. Older children may use drugs or alcohol, behave in risky ways, or engage in unhealthy sexual activity.⁴⁸

For children in immigration proceedings, there are additional factors to consider when employing a trauma-informed approach, including potential difference in language, power dynamics, adjustment to a new culture, placement of your client (i.e., detained, released to family, released to non-family), and potential lack of trust.⁴⁹

Often, the nature of our work requires us to work with clients as they recount prior trauma because it directly relates to the case. Employing a trauma-informed approach to your representation is essential

⁴⁶ Child Welfare Information Gateway. (2019). *Long-term consequences of child abuse and neglect*. Washington DC: HHS, Administration for Children and Families, Children's Bureau.

⁴⁷ *Trauma Informed Care for Children Exposed to Violence Tips for Agencies working with Immigrant Families*, Office of Juvenile Justice and Delinquency Prevention, <https://www.justice.gov/sites/default/files/defendingchildhood/legacy/2011/09/19/tips-immigrant-families.pdf> (last visited Oct. 17, 2025).

⁴⁸ *About Child Trauma*, The National Child Traumatic Stress Network (NCTSN), <https://www.nctsn.org/what-is-child-trauma/about-child-trauma> (last visited Oct. 17, 2025).

⁴⁹ Many of the concepts in this section were presented in a CILA Boot Camp presentation, *Exploring Trauma and Grief in Children and Teens*, by team members from the Trauma and Grief Center at Texas Children's Hospital/Baylor College of Medicine in September 2019.

because it is ethically necessary⁵⁰ and because it is important to treat clients with respect and compassion. Our goal is to reduce re-traumatization of our clients while we work with them on their case.

It is important to remember that “[a]lthough many immigrant and refugee youth have experienced adversity and hardship, first and foremost, they are people who have also drawn on significant internal and external strengths to have survived their past experiences.”⁵¹ In practice, it can be best to apply a strengths-based approach. “[A] strengths-based approach focuses on growth and development and recognizes that acknowledging strengths can build resilience and promote healing. The simple act of identifying and drawing attention to children’s strengths can promote resilience”⁵² By working with a child-centered and strength-based approach, advocates have an opportunity to be a part of their client’s healing process, to be a protective factor and supportive adult working alongside them.⁵³

Advocates can consider practicing with a framework that incorporates these actions: (1) inform and prepare your client; (2) offer choices as much and as often as you can; (3) empower the youth; (4) offer praise and gratitude; and (5) check-in with your client. Keeping in mind these five actions or themes at each stage of the representation and in each meeting can help advocates practice with trauma-informed care. Review CILA’s helpful resource, *Tips for Working with Migrant Children and Trauma-Informed Lawyering*, to learn more about these themes and tips to use in your practice. Tips to help you have trauma-informed advocacy are also included below.

Working with LGBTQ+ Youth

- CILA webinars: *Best Practices for Serving LGBTQIA+ Unaccompanied Youth* and *Being an Ally: Working with and Advocating for LGBTQ+ Unaccompanied Youth*
- Gay-Straight Alliance (GSA) Network: *Mission, Strategy & History*
- Immigration Equality: *Resources*
- GLSEN (Gay, Lesbian, & Straight Education Network): *Educator Resources*
- Anti-Violence Project: *About Us*
- United We Dream: *Who We Are*

⁵⁰ Rule 1.1 of the *ABA Model Rules of Professional Responsibility* addresses competence and mandates that “a lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.” *ABA Model Rule 1.3* states that “a lawyer shall act with reasonable diligence and promptness in representing a client.” This Model Rule is explained in comments, which state that “a lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client’s behalf.”

⁵¹ Miller, K. K., Brown, C. R., Shramko, M., and Svetaz, M. V. (2019). *Applying Trauma-Informed Practices to the Care of Refugee and Immigrant Youth: 10 Clinical Pearls*. *Children (Basel, Switzerland)*, 6(8), 94, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6721394/pdf/children-06-00094.pdf>.

⁵² *Id.*

⁵³ See *Working with Unaccompanied Children: Mental and Behavioral Health Toolkit*, Section 3, CILA (Apr. 25, 2025), <https://cilacademy.org/resource-file/working-with-unaccompanied-children-mental-and-behavioral-health-toolkit/>.

Build trust with your client:

- Build rapport with your client. Get to know their interests and who they are on a personal level. Remember that building rapport and trust with your client takes time. Make an attempt at each meeting to have time to build rapport with your client.
- You may even want to have a meeting where you do a fun game or activity with your client, or something that they enjoy, so you can get to know them better as a person and build rapport. While it is easy to want to dive right into the case, this may help you build trust with your client, which can help your working relationship and the case too.
- Be vulnerable. Share with your client your purpose in working on their case, as well as a little bit about yourself. This will help create a safe space for them to share with you.
- Help your client feel comfortable. For example, if possible, try to create an environment where it will be comfortable to talk. Maybe this will be a private room or a room with windows and an easy exit.
- Set the tone from the beginning of a meeting. Be welcoming and friendly by offering water or coffee, for example.
- Use language such as “we” or “us.” For example, “We will work together on this.”
- Go over confidentiality and your role as your client’s attorney.
- Use empathetic listening skills. *See Section II.C.*
- Be creative and engaging. For a list of ideas on how to engage youth in the process, review CILA’s resource, *Tips for Working with Migrant Children and Trauma-Informed Lawyering*.

Communicate clearly with your client:

- Use basic language that is child-friendly and age appropriate.
- Set expectations from the beginning. For example, give your client an idea of how long the meeting will last so they know there is an end time to talking about the difficult subject. In addition, offer your client a roadmap of the legal case, including a timeline, to the extent you can.
- Inform your client about what is needed to have a successful working relationship, such as being on time to meetings and being honest in communications, for instance. Let your client know of any consequences of not meeting these expectations. For example, if the client is 30 minutes late to an hour meeting, explain that you will only be able to meet for 30 minutes. Keep in mind that some of these expectations are likely new for your client due to the child’s age and/or cultural differences. It is also important to recognize you want to allow for some flexibility when setting meeting times. Your child client may not be able to drive or access public transportation alone and therefore may not have much control over if or when they arrive.
- Set boundaries with your client and be clear about your role. For example, this may be important when referring your client to other community resources such as a counselor or medical resources.
- Explain why you need certain information and how it will help your client’s case. For example, explain the importance of including details when your client recounts their story.

⁵⁴ Many of these ideas were represented in Torture Abolition and Survivors Support Coalition (TASSC) International and the Catholic Legal Immigration Network, Inc.’s (CLINIC) [webinar](#), *Developing a Trauma-Informed Consciousness for Legal Practitioners*, by presenter Caitlin Tromiczak, LICSW-C, LCSWC and Moderator Helen Chen, Esq on October 23, 2019. Watch this informative webinar to learn more.

TIPS FOR PRACTICING TRAUMA-INFORMED LAWYERING (continued)

Empower your client:

- View your client as a survivor rather than a victim.
- Identify and express your client's strengths.
- Keep in mind that certain behaviors exhibited by your client may be what has served your client well in the past.⁵⁵
- Help your client exercise control.
 - Give your client some options in the process when you ask your client to talk about difficult subjects. For example, give the client options of how to provide information to you and when.
 - Ask your client if they are willing to share their story.
 - Give your client the option to prepare for the meeting or not prepare. For instance, if you are helping your client with a declaration about a traumatic past event, you can offer the option to write their story in advance or not. For some, this may take some pressure off from recounting details on the spot. On the other hand, writing the story down may be overwhelming for some clients.
 - Offer choices to your client whenever you can. Be sure to remember when offering choices to present them as neutral options without persuasion toward one option over another. Decisions should be made by the client, and your role is to offer them the information they need to make informed decisions, and not to make decisions for them.



55 “[Y]outh who have experienced trauma use coping mechanisms to manage chronic stress. These coping mechanisms may have even been adaptive and even necessary for survival in prior circumstances, especially for youth who have experienced extreme violence. However, under less life-threatening circumstances, the coping mechanisms that have served the youth well in the past may create difficulties in the new environment.” Miller, K. K., Brown, C. R., Shramko, M., and Svetaz, M. V. (2019). *Applying Trauma-Informed Practices to the Care of Refugee and Immigrant Youth: 10 Clinical Pearls*. *Children (Basel, Switzerland)*, 6(8), 94, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6721394/pdf/children-06-00094.pdf>.

Give your client space when talking about tough subjects:

- Prepare your client in advance that you will be talking about difficult topics. Acknowledge it can be hard.
- Start the conversation with something more light-hearted.
- Try to connect and learn about your client's interests and culture.
- Take the necessary time to listen to your client.
- Observe your client for any signs that your client is getting overwhelmed, starting to get agitated or anxious, or withdrawing from the conversation.
- If the conversation becomes too much for your client, then take a break. Also, you may want to help ground your client, bringing your client back from the past memory to the present. Noting the date, time, and place where you are can be helpful, in addition to affirming to the client that they are safe in your office. See II.C. for more grounding techniques.
- Pace your meetings and offer breaks.
- Offer time to stretch, walk around, or use a stress ball.
- End the conversation with gratitude and by recognizing your client's strengths.
- Keep in mind that you may have to go over details several times if your client has an impaired memory, which can result from experiencing trauma. This may require additional meetings to gather more details.
- It may help to put situations in general terms. For example, if recommending to engage in counseling and/or get a mental health evaluation, explain that counseling is common in the United States. Acknowledge any stigma in your client's culture but explain how it is acceptable and common here. Emphasize how counseling and/or a mental health evaluation could be important for their case and that you generally recommend it to all your clients, so they do not feel singled out.

SECONDARY TRAUMATIC STRESS

Secondary traumatic stress is a common and natural response to exposure to someone else's trauma, injustices, accounts of violence, and other frightening circumstances.⁵⁶ "Secondary traumatic stress is the emotional duress that results when an individual hears about the firsthand trauma experiences of another."⁵⁷ Secondary traumatic stress for attorneys can result in changes to your behavior that manifest in various ways, such as irritability, tearfulness, numbness, hypervigilance, sleep disturbance, and nightmares.⁵⁸ Take care of yourself and seek support and help if you are experiencing these types of changes. Reach out to friends, family, colleagues, or a counselor. Check in with yourself for signs of vicarious trauma, take breaks, and pace yourself. Consider the strategies for prevention and intervention outlined in NCTSN's *Secondary Traumatic Stress: A Fact Sheet for Child-Serving Professionals* and in the Professional Quality of Life's "Helper Card." View CILA's webinars, *Secondary Traumatic Stress and Self-Care* and *Building*

⁵⁶ To learn more about indirect trauma, watch the webinar, *Keeping the Work Sustainable: The Inside & Out of Trauma Informed Immigration Practice with Children*, presented at May 2023 CILA's 5th Annual Symposium.

⁵⁷ *Secondary Traumatic Stress*, NCTSN, <https://www.nctsn.org/trauma-informed-care/secondary-traumatic-stress> (last visited Oct. 17, 2025).

⁵⁸ See William C. Silverman, *How to Identify and Address Secondary Trauma*, *The National Law Review* (Feb. 6, 2019), <https://www.natlawreview.com/article/how-to-identify-and-address-secondary-trauma>; Christina Rainville, *Understanding Secondary Trauma: A Guide for Lawyers Working with Child Victims*, ABA (Sept. 1, 2015), https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-34/september-2015/understanding-secondary-trauma--a-guide-for-lawyers-working-with/.

Resilience: Tools for Advocates Serving Unaccompanied Children, and the ABA COI webinar, *The Lifeguard is Drowning: Identifying and Combating Burnout and Secondary Trauma in Asylum Practitioners*.

Links to Learn More About TRAUMA-INFORMED LAWYERING

- Check out CILA's 101 [webinar](#): *Trauma Informed Lawyering with Unaccompanied Children* (1 hour, 4 minutes).
- View CILA's [webinar](#), *Trauma-Informed Spanish for Lawyers Serving Unaccompanied Children* (1 hour, 23 minutes), March 2025. Also review related materials, including *Trauma-Informed Spanish for Lawyers Serving Unaccompanied Children – Recorded Role Play Translations*, *Trauma-Informed Spanish for Lawyers Serving Unaccompanied Children*, and *Tips for Ensuring Trauma-Informed Interpretation*.
- Review CILA's resource, *Tips for Working with Migrant Children and Trauma-Informed Lawyering*, to learn practical tips for your advocacy efforts, October 2023.
- Review CILA's resource, *A Toolkit for Navigating Difficult Conversations with Child Clients: Guidance Examples*, November 2024.
- Check out U.S. Department of Health and Human Services Administration for Children & Families *Resources Specific to Immigrant or Refugee Populations*, November 2020.
- Check out the ABA's *Establishing a Trauma-Informed Lawyer-Client Relationship (Part 1)* and *Communicating with Youth who Have Experienced Trauma (Part 2)*, Eliza Patten, JD, CWLS and Talia Kraemer, JD, October and November 2014.
- Check out *Trauma Informed Principles Through a Culturally Specific Lens*, Josie Serrata, PhD and Heidi Notario, MA.
- Check out the [webinar series](#) created by Houston Immigration Legal Services Collaborative (HILSC) and member organizations (Tahirih Justice Center, Justice for Our Neighbors, CILA) and Rosalie Hyde, LCSW (Houston Galveston Trauma Institute). The series *Mental Health Evaluations for Immigrant Clients: From your First Interview to the Merits Hearings* covers topics such as listening to client's stories with a trauma-informed lens and setting up forensic evaluations.
- Consult Project TRUST's *Applying Person-Centered and Trauma-Informed Engagement Practices*.
- Share resources including CILA's *A New Path: My Toolkit for Navigating Life in the United States*, *Emotional Wellness Workbook for Youth*, and *Reunification Challenges: A Toolkit for Sponsors of Unaccompanied Minors*.

Links to Learn More About WORKING WITH SURVIVORS OF DOMESTIC VIOLENCE AND/OR CHILD ABUSE

- Check out National Domestic Violence Hotline's webpages on [supporting others](#) and their [resource page](#).
- Look at [WomensLaw.org](#) to find resources, such as advocates in shelters, legal assistance organizations, courthouse locations for filing a protection order, and sheriff departments.
- Check out [ASISTA's](#) website with resources for survivors and advocates.
- Review ASISTA and Ujima's *Practice Advisory: Anti-Blackness and Immigrant Survivors of Gender-Based Violence*, February 2023.
- Check out the American Academy of Child & Adolescent Psychiatry's *Trauma and Child Abuse Resource Center*, April 2024.
- Check out Casa de Esperanza's resource *Latina Immigrant Women and Children's Well-Being and Access to Services After Detention*, Laurie Cook Heffron, PhD, LMSW, Josie V. Serrata, PhD, and Gabriela Hurtado, PhD, 2018.

C. Interviewing Tips and Strategies

Tips and Strategies to Effectively Interview Children⁵⁹

Understand your client and meet them where they are at:

- **Child's age:** Use age-appropriate language when communicating with your client. This may require more preparation than interviewing an adult. Think about what you need to communicate and how you can do so in a way that is simple and easy to understand.
- **Child's developmental stage:** A wholistic approach to youth development considers their emotional and mental stages. Keep these factors in mind when planning what to discuss, how to bring up topics, and what you can cover in a meeting.
- **Child's cognitive ability:** Consider your client's cognitive abilities when thinking about the questions you will ask and the information you will need to gather in each meeting. In addition to using child-friendly language, you may need to check for understanding, by asking the same question in different ways. Creative analogies can also help to explain tougher concepts. For example, legal service providers have explained court proceedings to children as analogous to a soccer game, identifying the different "teams" (the client/attorney and the government) and the "umpire" (the judge). Alternatively, using toys can help show the different people in the courtroom by using dolls or blocks to represent the different people and show how the space will be set up.
- **Any trauma history:** Prior trauma can have an ongoing impact on children which may affect their ability to communicate and concentrate and impact other aspects of their behavior. Overall, this could affect the quality of an interview. Practice a trauma-informed approach by being aware of the implications of trauma as well as how you can help your client feel more at ease. *See Section II.B.*

CILA and Loyola's Center for Human Rights of Children (CHRC) created the resource, *Considerations for Tender-Aged Children in Immigration Court Proceedings*, which covers various topics—such as child development, interviewing children, a cross-disciplinary review of child treatment in the courtroom, and ethical considerations when representing young children. The resource covers information to help immigration practitioners working with children under the age of thirteen and includes appendices with many practical tips on child development and child interviewing. CILA's [webinar](#), *Meeting Unaccompanied Children Where They Are: Practical Guidance Across Developmental Stages*, to learn about the stages of child development and how to engage children in a developmentally appropriate and trauma-informed manner.

Have a plan for the interview location: Consider the interview location, and try to make this a private, comfortable space in which the child feels safe. If you are meeting at your law firm's office, consider rooms without large interior windows and spaces with comfortable seating like a couch or carpeted flooring. For more tips on preparing the environment and interacting with clients in various locations, review *A Toolkit for Navigating Difficult Conversations with Child Clients: Guidance & Examples*.

⁵⁹ Many of these ideas were represented in CILA's Boot Camp [presentation](#), *Child Interviewing Techniques*, from 2021 by speakers from the Young Center for Immigrant Children's Rights and KIND.

Key Tools for Conducting the Interview:

- Grounding Techniques:
 - Let the child fidget with a pipe cleaner or other toy.
 - Let the child color, draw, or play with playdough.
 - Practice breathing exercises with your client.⁶⁰
 - Try out the 5-4-3-2-1 Grounding Technique.⁶¹ Check out the graphic in this section for more information on how to use this technique.

5-4-3-2-1 Grounding Technique in English and Spanish

Do you remember what your five senses are? Sight, touch, smell, taste, and hearing. These five senses are engaged in sync with your mindfulness. Mindfulness and grounding help our brain disconnect from those kinds of thoughts and activate our five senses so that we consciously return to the present, to this time when our bodies and mind are living, and we can cleanse our mind and move on. Below is the language you can use to lead someone through this grounding technique:

5 Identify five things you see around you. Look around you / Identifique cinco cosas que ves a tu alrededor. Mira a tu alrededor

4 Identify four things you can touch, using your sense of touch, whether with your feet, legs, hands, or your entire body / Identifique cuatro cosas que puedes tocar, usando tu sentido del tacto, ya sea con tus pies, piernas, manos o todo tu cuerpo.

3 Identify three things you can hear. Using your sense of hearing, what can you hear around you? / Identifique tres cosas que puedes escuchar. Usando tu sentido del oído, ¿qué puedes escuchar a tu alrededor?

2 Identify two things you can smell. What are two smells that are hidden in the corners of what you can observe, feel, and hear right now? / Identifique dos cosas que puedes oler. ¿Cuáles son dos olores que están ocultos en las esquinas de lo que puedes observar, sentir y escuchar en este momento?

1 Identify one thing you can taste. What is one thing you can savor right now? / Identifique una cosa que puedes probar. ¿Qué es una cosa que puedes saborear en este momento?

Similar exercises are featured in CILA's *Working with Unaccompanied Children: Mental and Behavioral Health Toolkit*. The toolkit aims to provide context to unaccompanied children's experiences and 101 essential information regarding mental and behavioral health, as well as tools and resources in English and Spanish. Additionally, CILA's *Emotional Wellness Workbook for Youth* provides activities, including a worksheet on this exercise, and a supportive space for youth to explore strategies for navigating mental and emotional health complexities they might face as adolescents. The workbook is available in [English](#) and [Spanish](#).

60 See *How to Teach Your Child Calm Breathing*, Anxiety Canada, https://www.anxietycanada.com/sites/default/files/calm_breathing.pdf (last visited Oct. 17, 2025). See also *Breathing Strategy - Flower and Candle*, Momentous Institute (Apr. 11, 2019), <https://www.youtube.com/watch?v=Wc9pBYl1-Mk>; *Roller Coaster breathing*, Logos Academy (July 17, 2015), <https://www.youtube.com/watch?v=drb-VT9FlwE>.

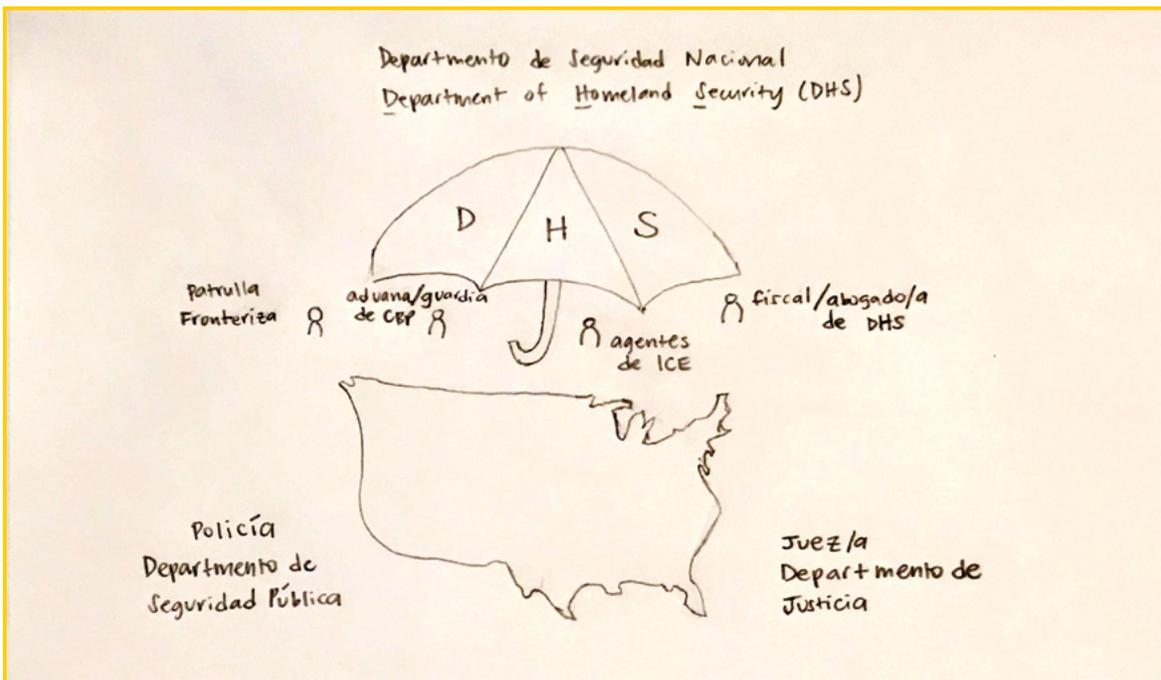
61 See Sara Smith, BSW, *5-4-3-2-1 Coping Technique for Anxiety*, University of Rochester Medical Center's Behavioral Health Partners Blog (Apr. 10, 2018), <https://www.urmc.rochester.edu/behavioral-health-partners/bhp-blog/april-2018/5-4-3-2-1-coping-technique-for-anxiety.aspx>.

- **Empathetic Listening:**

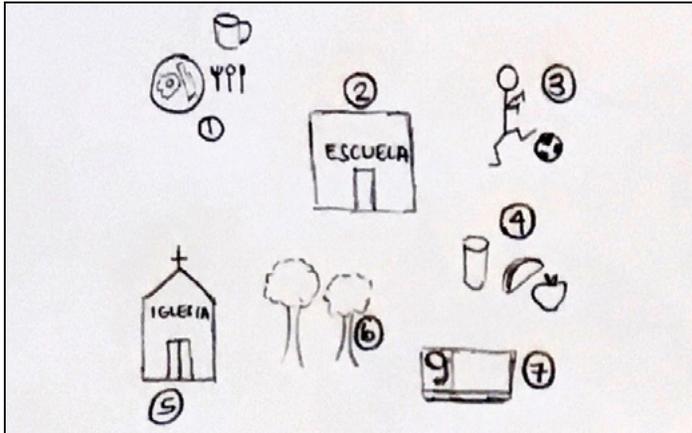
- Listen carefully.
- Be patient. Long pauses are okay.
- Mirror the speaker's thoughts and feelings back to them, by repeating what you hear.
- At times, express understanding as your client speaks.
- Be open, not judgmental. Listen without projecting your perspective and opinions onto your client.

- **Visuals:**

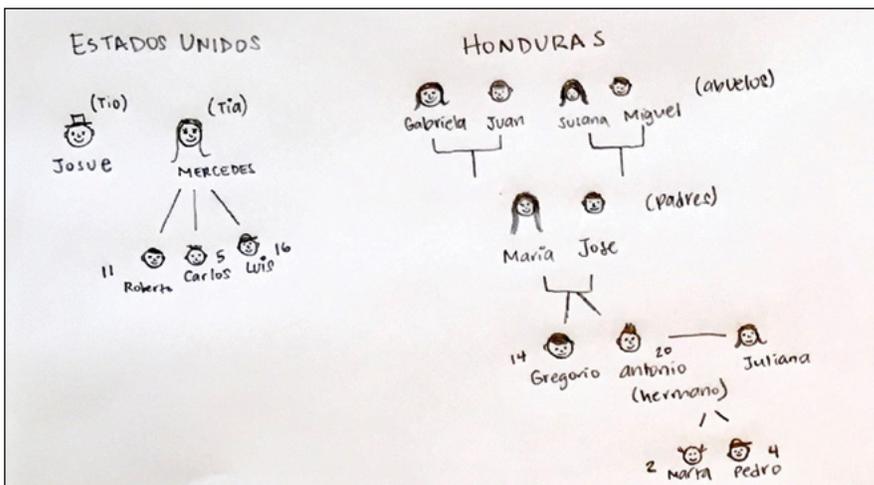
- Drawing pictures can be a powerful communication tool when working with youth. Consider bringing paper and crayons so you can use visuals to help the youth tell their story or to explain key concepts like in the examples provided below. Younger children often like to draw, but often this technique works with older children as well.
- **Example 1: Agencies.** You can draw images to explain the legal process. This sample drawing is based on a visual from the South Texas Pro Bono Asylum Representation Project (ProBAR). It shows that DHS houses border patrol (patrulla fronteriza) and customs/ guard (aduana de CBP/ guardia) both in CBP, ICE agents (agentes de ICE), and the government attorney (fiscal/abogado/a de DHS). It shows that the immigration judge (juez/a) is under the Department of Justice (DOJ) (Departamento de Justicia) and that the police/public security department (policía/Departamento de Seguridad Pública) is also separate from DHS. To see an example of a drawing showing who will be present in immigration court, refer to [Section IV.C](#).



- **Example 2: Daily Life.** You might ask your client to draw pictures of how they used to spend an average day in their home country. This can help you learn about your client and their life, and later, you can use the same technique to gain more information that will pertain to their potential legal relief. This is an example of a drawing from hypothetical client, Gregorio. In the drawing, Gregorio drew his typical day noting he usually: (1) eats breakfast; (2) goes to school (escuela); (3) plays soccer; (4) has lunch; (5) goes to church (iglesia) after school; (6) spends time outside; (7) and then goes to bed.



- **Example 3: Family Tree.** You could also ask your client to draw a family tree. You or your client can draw little faces or stick people as you review the family members in the child's life. As you draw, you can ask other questions to get to know more about your client's life. You can add onto the family tree notes regarding the youth's family members' ages and relationships. The drawing below from hypothetical client Gregorio shows a family tree, including his grandparents (abuelos), parents (padres), and his brother (hermano) and his brother's wife and kids, who still live in Honduras. He also drew pictures of family members he has in the United States (Estados Unidos) including his aunt and uncle (tía and tío) and his cousins. He provided some of their ages in the drawing.



Important Tips to Remember:

- Employ a trauma-informed approach during your interviews. See [Section II.B](#).
- Take the time to build trust with your client. Trust building may take more than one meeting.
- Be warm, friendly, and personable.
- Remember your ethical duties. Try to learn your client’s wishes for their case, even if communication is limited due to age. See [Section II.E](#).
- If working with a young child, get on the level of the child physically. Sit on the floor and play with the child as they talk. In general, it can help to simply spend time with the youth—no matter their age. It can also help to play together, such as doing a game or puzzle, to build rapport and trust.
- Honesty is essential. Remind your client to tell the truth.
- Remind your client that it is okay to say “I do not know.”
- Let your client know that it is okay to say “I do not want to talk about that.”
- Remind your client that it is always okay to say “I do not understand” and to ask questions.
- Oftentimes, a client may say, “You know the information already.” It can be helpful to explain the importance of hearing their story directly from them in their own words, and that this helps you prepare their case and that it is important because it is their story.
- Remember to check in with your client to see how they are doing from time to time. Offer breaks.
- Read body language and facial expressions. Offer help to deal with any distress they are experiencing during the interview. Perhaps at this time introduce a grounding technique.
- Thank your client for their participation.

Links to Learn More About INTERVIEWING CHILD CLIENTS

- View CILA’s [webinar](#), *Meeting Unaccompanied Children Where They Are: Practical Guidance Across Developmental Stages* (1 hour, 29 minutes), August 2025.
- Watch CILA’s [presentation](#), *Child Interviewing Techniques* (40 minutes), November 2021.
- Read the resource developed by CILA & Loyola’s Center for the Human Rights of Children (CHRC), [Considerations for Tender-Aged Children in Immigration Court Proceedings](#), September 2023.
- View the [presentation](#), *Legal Services for Tender-Age Children and Best Practices When Providing Services Remotely* (56 minutes), from CILA’s May 2021 3rd Annual Symposium.
- Watch the [presentation](#), *Using Play to Help Unaccompanied Children Navigate the Immigration Process* (about 1 hour), from CILA’s May 2025 7th Annual Symposium and the [presentation](#), *Innovative Communication Tools and Resources – Using Play, Active Engagement, and Trust Building with Unaccompanied Children* (about 1 hour), from CILA’s May 2022 4th Annual Symposium.
- Review CILA’s resource, [A Toolkit for Navigating Difficult Conversations with Child Clients: Guidance & Examples](#), November 2024. The resource includes example scripts in English and Spanish.
- View Stanford’s Center for Health Education and UT-RGV four part [video series](#) on trauma-informed interviewing techniques.
- Read Society for Research in Child Development’s [Questioning Unaccompanied Immigrant Children: Lessons from Developmental Science on Forensic Interviewing](#), October 2019.
- Read the ABA article, [Representing Child Abuse Victims: Forensic Interviewing Tips](#), Claire Chiamulera, November 2017.

D. Working with Interpreters and Translators

Language access is an important issue when working with immigrant youth. First, it is important to determine your client's preferred/best language. While you may think you know your client's language based on an intake form or other paperwork you receive, it is good practice to double-check this information. Your client may speak multiple languages, but it is important to ask them what language they feel most comfortable speaking and understand the best. Keep in mind that your client's preferred spoken language may be different from their preferred written language.

Remember that interpretation and translation are not one and the same. Translators work with the written word and written material, while interpreters work with the spoken word. For example, a translator may translate a birth certificate from Spanish to English, while an interpreter may provide interpretation services during a meeting so an English-speaking attorney can communicate with a client who speaks Spanish. It is very possible that you will need to work with someone to help you translate and/or interpret during your pro bono representation. Translation and interpretation involve different skill sets; however, sometimes, it is possible to work with one person to assist to provide this case support.

Read the tips below for success when working with an interpreter and/or a translator.

Tips Relevant to Working with an Interpreter or Translator

- Remember ethical duties when working with an interpreter and/or translator. *See Section II.E.*
- Prepare the interpreter or translator by briefly explaining the purpose for the call/meeting.
- Review confidentiality with your client and the interpreter or translator. Ask the interpreter or translator to sign a statement regarding confidentiality and your client to sign a release.
- Remind the interpreter or translator to use word-for-word and first-person narration, if applicable.
- You will likely need signature(s) and/or statements from the interpreter or translator regarding accuracy of interpretation or translation if they are helping with any immigration forms or other court documents. For instance, *see* Immigration Court Practice Manual (ICPM) [Ch. 3.3\(a\)](#) and [Appendix G](#). for an example certificate of translation.

Tips Relevant to Working with an Interpreter

- Your client may prefer working with an interpreter of a particular gender. Ask about their comfort level and preference.
- Clearly communicate and identify expectations and roles for the interpreter and your client.
 - The interpreter should be a neutral party, not a family member or friend.
 - The interpreter should interpret exactly what you say and not answer questions themselves or add commentary.
- If possible, in-person interpretation is best.
- Interpretation takes time. Plan accordingly. Be patient.
- Confirm that both the interpreter and child can understand each other.
- Use simple, clear language. Use short sentences.
- Provide explanations of terms and concepts, as needed, to avoid confusion.
- Speak slowly and pause as you go.
- Be respectful of your client and the interpreter. Consider your tone. Try not to interrupt. Ask for clarification if needed.
- Give your client and the interpreter opportunities to take breaks.
- Speak directly to your client. Give your client eye contact and engage with them, instead of the interpreter. Set up the room to help facilitate dialogue directly with your client.

Tips Relevant to Working with a Translator

- If you have the time and capacity, read the translated documents or have another individual review the translation to check for accuracy, client's voice, and word-for-word translation.
- Emphasize the necessity of word-for-word translation to the translator—even with usages of slang, misspellings, and incorrect grammar.
- Attorneys with language skills should not do their own translation because ethically they cannot be considered a witness in the case if there is an issue with the translation.

Links to Learn More About WORKING WITH INTERPRETERS AND TRANSLATORS

- View CILA's [webinar](#), *Trauma-Informed Spanish for Lawyers Serving Unaccompanied Children* (1 hour, 23 minutes), and review the related training materials, March 2025.
- Read CILA's resource, *Practical and Ethical Considerations and Reminders when Working with Translators and Interpreters*, April 2023.
- Review CILA's resource, *ABA CILA & COI Pro Bono Program Resources and Templates Toolkit*, and particularly the "Resource for Pro Bono Attorneys: FAQ on Pro Bono & Interpreters and Translators" to see tips and ideas to find an interpreter or translator, July 2022.
- Check out CILA's [webinar](#), *Making Interpretation Seamless: Best Practices for Attorneys* (59 minutes), March 2018.
- Check out Ayuda's *Working with Interpreters Outside of the Courtroom: A Guide for Attorneys*, 2016.
- Review CILA's *Resources for Working with Indigenous Individuals*, December 2023.

E. Ethical Considerations

Considering ethical duties is a daily aspect of any attorney’s practice, but there are several ethical issues that may uniquely arise when working with children and when doing pro bono work. The Guide will address some of the most common ethical issues that arise when representing youth in pro bono cases.

Attorney conduct is regulated by the [Federal Rules of Practitioner Conduct](#) when practicing before the Executive Office for Immigration Review (EOIR) or U.S. Citizenship and Immigration Services (US-CIS).⁶² Attorneys should review these rules. In addition, it is important to be aware of ethical rules in the state where you are licensed and practicing. If you have an ethics question, after reading your state’s ethics rules, comments, and opinions, then consider consulting with others you trust on the matter including a pro bono coordinating attorney, if there is one at the organization who referred the case to you. Many state bars have an ethics hotline that you can contact for assistance, which can be a very helpful tool. Also, look for other helpful resources in your area. For instance, organizations like CILA may be able to assist with [technical assistance questions](#) for pro bono attorneys who take cases posted to [CILA’s platform](#) or attorneys working at certain legal services providers.

If you think it is necessary to have a [best interest](#) opinion in the case, contact the [Young Center for Immigrant Children’s Rights](#) (Young Center) to refer a child for the appointment of a child advocate. This can be particularly helpful in challenging cases or cases involving very young children. EOIR [PM 20-03](#) describes when a child advocate can be appointed, including for child trafficking victims and other vulnerable unaccompanied children.⁶³

TIP: Rapidly changing immigration policies can lead to ethical questions for attorneys to consider. They must determine how to communicate issues to clients and how to advise clients about what steps they may or may not need to take to comply with changing policies.

The chart below points primarily to the [ABA Model Rules of Professional Conduct](#) as an example and guide for how to address some common ethical questions that can arise in children’s immigration cases.

COMMON ETHICAL QUESTIONS OR SCENARIOS	WHERE TO LOOK FOR GUIDANCE
<p>Can I represent a child?</p> <p>Bottomline answer: Yes.</p>	<ul style="list-style-type: none"> • <i>In re Gault</i>, 387 U.S. 1 (1967)—juvenile justice • <i>ABA Standards for the Custody, Placement and Care; Legal Representation; and Adjudication of Unaccompanied Alien Children in the United States</i>—Section III.H. Right to Attorney
<p>What does representation cover?</p>	<ul style="list-style-type: none"> • ABA Model Rule 1.2 Scope of Representation and Allocation of Authority Between Client and Lawyer <ul style="list-style-type: none"> - What is reasonable? - Has the client given informed consent? • TIP: It is important to define the scope of representation, including whether it will include appellate work. This becomes even more important when only working on a discrete part of a case.

⁶² See 8 C.F.R. §§ 1292.3, 292.3, 1003.101, and 1003.102. See also Immigration Court Practice Manual (ICPM) Ch. 10.4. Also, be aware of the McHenry EOIR Policy Memorandum (PM) 19-06, *Internal Reporting of Suspected Ineffective Assistance of Counsel and Professional Misconduct*, Dec. 18, 2018.

⁶³ On January 31, 2025, EOIR issued [PM 25-14](#) to rescind the prior guidance on child guidance in [DM 23-03](#) and reinstate the guidance in [PM 20-03](#).

COMMON ETHICAL QUESTIONS OR SCENARIOS	WHERE TO LOOK FOR GUIDANCE
<p>I am new to immigration, am I obligated to learn the law?</p>	<ul style="list-style-type: none"> • Rule 1.1 Competence • Rule 1.3 Diligence
<p>I want to represent the child and their parent in state court, is that okay?</p>	<ul style="list-style-type: none"> • Rule 1.7 Conflict of Interest: Current Clients • Rule 1.8 Conflict of Interest: Current Clients: Specific Rules • Rule 1.9 Duties to Former Clients
<p>How do I represent a child? Do I represent the child's wishes or best interest?</p> <p>Bottomline answer: the child's wishes.</p>	<ul style="list-style-type: none"> • Rule 1.2 Scope of Representation and Allocation of Authority Between Client and Lawyer <ul style="list-style-type: none"> - (a) "a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued." • Rule 1.14 Client with Diminished Capacity <ul style="list-style-type: none"> - (a) "When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client." - Comment 1: "For example, children as young as five or six years of age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody." • Rule 1.4 Communications • Rule 2.1 Advisor • <i>ABA Standards for the Custody, Placement and Care; Legal Representation; and Adjudication of Unaccompanied Alien Children in the United States – Section V.A. The Attorney's Role</i>
<p>When is withdrawal allowed?</p>	<ul style="list-style-type: none"> • Rule 1.16 Declining or Terminating Representation • Rule 1.3 Diligence • Rule 1.4 Communications • Rule 2.1 Advisor • Rule 3.1 Meritorious Claims and Contentions • NOTE: Keep in mind many nonprofit organizations do not have capacity for a case to be given back to them.

COMMON ETHICAL QUESTIONS OR SCENARIOS	WHERE TO LOOK FOR GUIDANCE
<p>Can I share information with a 3rd party?</p> <ul style="list-style-type: none"> • How can we keep information confidential and under privilege? 	<ul style="list-style-type: none"> • Rule 1.6 Confidentiality of Information • Rule 1.4 Communications <ul style="list-style-type: none"> - Has the client given informed consent? <i>See</i> 1.0(e) for the definition of “informed consent.” • Rule 5.3 Responsibilities regarding nonlawyer assistance • TIP: For cases referred by an organization that continues to communicate about the case, is there a Memorandum of Understanding regarding the working relationship between the attorney and organization? • TIP: When working with interpreters or translators, do you have a confidentiality agreement with the interpreter/translator? Do you have a release from your client?
<p>I found out the child I represent was abused by their parent; do I have to report this to child protective services?</p>	<ul style="list-style-type: none"> • Look to state law. Does the state where you practice or where you are licensed have a duty to report? Is this a mandatory duty to report? Does the duty apply to attorneys? • Consider questions relating to privilege and confidentiality as well. Is communicating what the client told you prohibited absent client consent? <ul style="list-style-type: none"> - Rule 1.6 Confidentiality • TIP: If your state has a mandatory duty to report, it helps to inform your client at the beginning of representation and include it in your engagement letter. Explain what abuse is and your obligations to report.
<p>My client asked me to keep something important from the immigration court or USCIS, what do I do?</p>	<ul style="list-style-type: none"> • Rule 3.3 Candor toward the Tribunal • Rule 1.2 Scope of Representation and Allocation of Authority Between Client and Lawyer • Rule 1.6 Confidentiality of Information • Rule 1.7 Conflict of Interest: Current Clients • Rule 1.16 Declining or Terminating Representation

COMMON ETHICAL QUESTIONS OR SCENARIOS	WHERE TO LOOK FOR GUIDANCE
<p>I have concerns about my child client's capacity and/or competency. What do I do?</p>	<ul style="list-style-type: none"> • Rule 1.14 Client with Diminished Capacity • Rule 1.2 Scope of Representation & Allocation of Authority Between Client & Lawyer • <i>ABA Standards for the Custody, Placement and Care; Legal Representation; and Adjudication of Unaccompanied Alien Children in the United States</i> – Section V.A. The Attorney's Role, Section X.C. Determinations of Competency in Immigration Adjudications • NOTE: When a child client expresses that they want to take a certain course of action that you think is not in their best interest, this in and of itself does not mean that they lack capacity/or competency. See Rule 1.2. • TIP: If you are concerned about the child's ability to make choices and meaningfully participate in their immigration case, consider submitting a referral for a child advocate through the Young Center. • TIP: If you have competency concerns about a client in removal proceedings, consider raising the issue in immigration court and seeking safeguards in line with <i>Matter of M-A-M-</i>, 25 I&N Dec. 474 (BIA 2011).

 **Links to Further Support Your Knowledge of ETHICAL ISSUES IN CHILDREN'S CASES**

- Check out CILA's [101 webinar: Ethical Representation for Unaccompanied Children](#) (21 minutes).
- View CILA's [webinar: Sticky Issues: Ethical Challenges in Representing Unaccompanied Children](#) (1 hour, 33 minutes). This webinar also points to relevant Texas Disciplinary Rules of Conduct.
- Review CILA's resource, [A Toolkit for Navigating Difficult Conversations with Child Clients: Guidance Examples](#), November 2024. This interdisciplinary resource includes ethical considerations, helpful context for conversations, practical tips for supporting clients, and self-care strategies.
- Read Markkula Center for Applied Ethics at Santa Clara University's [A Framework for Ethical Decision Making](#), November 2021.
- Review the *ABA Standards for the Custody, Placement and Care; Legal Representation; and Adjudication of Unaccompanied Alien Children in the United States*, August 2018.
- Read Lowenstein Sandler's Memorandum, [Ethical Obligations in Representing Children Without Capacity in Immigrant Proceedings](#), authored by Catherine Weiss and Sarah Scott, December 2018.
- Check out CILA's resource, [Ethical Considerations when Discussing Social Media with Your Immigration Client](#), April 2025.
- Learn more with CILA's blog post series on [Ethics and Working with Unaccompanied Children](#), featuring posts on [addressing client capacity concerns](#), [competency issues and procedural safeguards in removal proceedings](#), and [prospective clients and conflicts of interest](#).
- For family unit cases, review ethical considerations in the ABA COI's [Family Group Dedicated Docket Pro Bono Manual](#), November 2022.



SECTION III.

III. COMMON FORMS OF RELIEF

A. Assessing Forms of Relief

The Screening Process

A referring organization may conduct an initial intake to screen for relief and provide recommendations for the types of legal relief to pursue. The pro bono attorney should still be familiar with the different types of potential relief in immigration cases and screen throughout the case for potential relief.⁶⁴ Before meeting with your client, research the different types of relief available and prepare by organizing your notes and questions in advance. You want to understand the key requirements for each type of potential relief as well as the potential pros and cons of seeking that form of relief. While you provide advice, remember that the client must ultimately decide what relief they want to pursue.⁶⁵

TIP: Even if the case file has an intake form, remember that children may not always be forthcoming in their initial meetings and that you should always conduct your own evaluation of the case. Review [Section II.C.](#) for interviewing tips and strategies. Check out these example intake materials from [ABA COI](#) and [CILA](#) (template starting on page 49), [Catholic Legal Immigration Network, Inc. \(CLINIC\)](#), and [ILRC](#).

SEEKING MULTIPLE FORMS OF RELIEF

Your client may simultaneously apply for multiple forms of relief. In fact, it is often best to preserve options by pursuing multiple forms of relief at the same time, if available to your client.⁶⁶ Be clear at the outset of the case about your role. If you will only help seek one type of legal relief, you should clearly explain that at the outset and make the scope of representation clear in your representation agreement. You may also need to clarify the scope of your representation when entering an appearance with USCIS or in immigration court.

TIPS FOR ASSESSING MULTIPLE FORMS OF RELIEF

It helps to understand your client's goals and priorities for their legal case when discussing relief options and making a case strategy plan. Considerations to discuss may include:

- What is the impact on any ongoing removal proceedings? Who will be the adjudicator of the claim?
- If the client is not in removal proceedings, will applying increase the risk of the client being issued a Notice to Appear (NTA) by USCIS and placed in removal proceedings?
- How much does the application for relief cost? Are fee waivers available?
- What is the timeline for seeking this form of relief? Are there significant delays or backlogs?
- Will seeking an additional form of relief impact the process and/or timeline? How so?
- Does your client want to travel in the future to their country of origin?
- Does your client want to help family members or parents obtain benefits in the United States?
- Does your client want to seek work authorization?

⁶⁴ CILA has a series of blog posts on best practices for consistently keeping in contact with clients and re-screening for relief, especially in cases that last a long time. Here are the posts on [SIJS](#), [family-based petitions](#), [asylum](#), [VAWA self-petitions](#), [U Visas](#), and [T visas](#).

⁶⁵ See [Section II.E.](#) for more information about the attorney's role and obligations to advocate for the express interest of the child.

⁶⁶ However, be aware that USCIS released a Policy Memorandum "[Issuance of Notices to Appear \(NTAs\) in Cases Involving Inadmissible and Deportable Aliens](#)" which can increase the risk of someone being placed in removal proceedings after filing for relief affirmatively with USCIS if that relief is denied.

HUMANITARIAN-BASED RELIEF

Immigration law is expansive and includes employment-, family-, and humanitarian-based options.⁶⁷ Most unaccompanied children’s cases involve humanitarian-based relief. This Guide focuses on [asylum](#),⁶⁸ [special immigrant juvenile status \(SIJS\)](#); [U visas](#); [T visas](#); and [family petitions and relief under the Violence Against Women Act \(VAWA\)](#).

The following chart provides a starting point and general information to compare these forms of relief. You should review the detailed sections of the Guide and specifically research each form of relief to better understand them and the nuances involved for these particular issues before advising a client.

	ASYLUM	SIJS	U VISA	T VISA	VAWA
Pathway to lawful permanent resident (LPR) status	Yes, 1 year after grant of asylum	Yes, but subject to years-long waitlist	Yes, 3 years after visa approval and years-long waitlist for visa approval	Yes, 3 years after visa approval	Yes, but may be subject to waitlist for green card availability
Derivative⁶⁹ applicants allowed	Yes	No	Yes	Yes	Yes
Return to country of origin allowed⁷⁰ <i>(see fn for key details)</i>	No ⁷¹	Yes, once LPR status granted	Yes	Yes	Yes
Sponsorship of Parents Allowed	Yes	No ⁷²	Yes	Yes	Yes
Work authorization eligibility while application pends	Yes, after application has been pending for 180 days	If granted deferred action or after LPR application submitted	Yes, if receive bona fide determination or after approval	No, only after approval	No, only after approval

⁶⁷ While uncommon, some unaccompanied children may qualify for family-based relief if they are related to U.S. citizens or Lawful Permanent Residents (LPRs). This is why it is important to ask about the legal status of any family members in the United States. See [Section III.C](#).

⁶⁸ The Guide also discusses how to seek [Withholding of Removal](#) and relief under the [Convention Against Torture \(CAT\)](#) as alternatives to asylum.

⁶⁹ Derivative applicants are generally family members who may be eligible to receive benefits or join the principal applicant once they receive a visa or green card. Review each specific form of relief for more detailed information including which family members can be derivatives and at what point in the process.

⁷⁰ Options for traveling anywhere outside of the United States are very limited until the applicant receives permanent residency. You should always review the requirements and processes involved and advise your clients of any risks of traveling. For example, Tahirih Justice Center has more information about travel issues in their overviews of what happens after a [T Visa](#) or [U Visa](#) is approved. In addition, in certain political climates there can be risks associated with traveling abroad even for legal permanent residents. See Juliana Kim, *What green-card and visa holders should know before traveling abroad*, NPR (Mar. 29, 2025), <https://www.npr.org/2025/03/29/nx-s1-5343493/green-card-holders-rights-visa-detained-cbp>.

⁷¹ See Asylum Seeker Advocacy Project (ASAP), *Moving and Traveling*, <https://help.asylumadvocacy.org/faqs-moving-traveling/#travel-outside-united-states> (last visited Oct. 17, 2025); 8 U.S.C. § 1158(c).

⁷² Review CILA and National Immigration Project’s (NIPNLG) resource, *Understanding the SIJS Parental Benefit Prohibition: What Advocates and Clients Need to Know*, for more information and review of this important issue.

A NOTE ABOUT TEMPORARY PROTECTED STATUS (TPS) & HUMANITARIAN PAROLE

While not the focus of this Guide, there are two types of temporary relief options to be aware of.

Temporary Protected Status (TPS) is a form of temporary immigration relief that allows people from certain countries to remain in the United States for a set period of time, typically from 6 to 18 months although that time can be extended.⁷³ During that time, the recipient cannot be removed and is eligible for work authorization. While TPS does **not** provide a pathway to legal permanent residency, recipients can apply for other relief options, and it is possible for the designation period to be extended. Applications for TPS must be submitted during a set eligibility period.

Humanitarian parole refers to the U.S. government's ability to grant someone who is outside the United States the ability to come into the country for humanitarian reasons.⁷⁴ In the past, the government offered parole for people from certain countries who had a sponsor in the United States (including Afghanistan, Cuba, Haiti, Nicaragua, and Venezuela).⁷⁵ Similar to TPS, parole usually lasts at most a few years and does **not** provide a pathway for permanent residency but can protect against removal and provide an opportunity to seek other relief and work authorization.

TIP: TPS and parole have historically been areas of law with frequent changes. Eligibility may be subject to ongoing litigation. If considering an application for your client, be sure to check for any legal updates or for the risk of any upcoming policy changes.

Central American Minors (CAM) Refugee and Parole Program

Youth from El Salvador, Guatemala, or Honduras with a parent or legal guardian living in the United States may be eligible for relief under the [CAM Refugee and Parole Program](#). This program was designed to reunite youth with their parents and applies only if the parent or guardian has a certain legal status in the United States. However, since its creation in 2014 the program's viability and eligibility criteria has changed over time. Learn more about changes from 2023 in CLINIC's [Updates to the Central American Minors Program](#) (April 26, 2023). As of July 2025, the CAM Program is indefinitely paused because it is part of the U.S. Refugee Admissions Program (USRAP) that was [indefinitely suspended](#) by an executive order in January 2025. If the program begins operating again and you think your client might be eligible, review this [practice advisory](#) from ILRC for more information about how to apply.

⁷³ See USCIS, *What is TPS?*, <https://www.uscis.gov/humanitarian/temporary-protected-status> (last reviewed/updated Sept. 24, 2025). Further, to learn more about TPS, updates related to TPS, and ongoing litigation, check out the National Immigration Litigation Alliance's (NILA) practice advisory *Temporary Protected Status: Summary of Rights, Protections, and Ongoing Litigation* (June 30, 2025).

⁷⁴ See USCIS, *Humanitarian or Significant Public Benefit Parole for Aliens Outside the United States*, https://www.uscis.gov/humanitarian/humanitarian_parole (last reviewed/updated Dec. 15, 2025).

⁷⁵ See DHS Press Release, *DHS Issues Notices of Termination for the CHNV Parole Program, Encourages Parolees to Self-Deport Immediately* (June 12, 2025), <https://www.dhs.gov/news/2025/06/12/dhs-issues-notices-termination-chnv-parole-program-encourages-parolees-self-deport>.

Links to Help You with ASSESSING YOUR CLIENT'S RELIEF OPTIONS

- There are frequent changes in children's immigration law, and additional research is necessary to stay on top of the changes. CILA generally provides a high-level overview of the changes in an annual "Roundup" webinar series that can be found [here](#).
- Review the sample intake forms and other resources in ABA CILA & COI's *Pro Bono Program Resources & Templates Toolkit*, July 2022.
- Watch the ABA COI [webinar](#), *Common Forms of Immigration Relief for Family Groups and How to Screen for Them* (1 hour 31 minutes), February 2023.
- Read CILA's ongoing [blog series](#) on *Supporting Our Clients in the Interim by Rescreening for Relief*.
- If your client has any criminal history, check out ILRC's [Relief Chart](#) and Immigrant Defense Project's [Immigration Consequences of Convictions Checklist](#) for helpful information on assessing eligibility for immigration relief despite criminal record issues.

B. Asylum

If your client is afraid to return to their country of origin, it is important to discuss the option to apply for asylum. Asylum is a common form of potential relief in many youths' cases because many children are fleeing violence in their country or other dangerous conditions. There are many reasons children flee to the United States and fear going home. These reasons are often intersecting.⁷⁶ The root causes of migration could include targeted violence because of the child or their family's race or ethnicity, religion, sexual orientation, political opinion, refusal to become a gang member or a girlfriend of a gang member, sexual violence or child abuse, or because their parent or caregiver suffered harm. There are many reports on the general conditions in countries around the world. Every child has a unique story. It is important to discuss these matters in detail, and the option of asylum as a potential form of relief.

[Form I-589, Application for Asylum and for Withholding of Removal](#) is used to apply for asylum. An asylum applicant may be able to seek employment authorization while their claim is pending after a waiting period has passed and so long as there have not been disruptions to their [Asylum EAD Clock](#).⁷⁷

Eligibility Requirements

To be eligible for asylum, an individual must be physically present in the United States and meet the definition of a refugee under the Immigration and Nationality Act (INA) § 101(a)(42)(A). The INA defines a refugee⁷⁸ as:

[a]ny person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.

INA § 101(a)(42)(A).

New to Asylum Law?

There are many resources included throughout this section to support you in your advocacy of a child seeking asylum. Get started by watching CILA's [101 webinar](#) on asylum law and use CILA's [Asylum Case Theory and Evidence Matrix](#) to help you stay organized as you work with the child to develop the case.

⁷⁶ See United Nations High Commissioner for Refugees (UNHCR) Report, *Children on the Run* (2016), <https://www.unhcr.org/en-us/children-on-the-run.html>.

⁷⁷ See Section IV.D. for more information about how asylum seekers can obtain employment authorization.

⁷⁸ *INS v. Cardoza-Fonseca* states that, "[i]n interpreting the Protocol's definition of 'refugee' we are further guided by the analysis set forth in the Office of the United Nations High Commissioner for Refugees, Handbook on the Procedures and Criteria for Determining Refugee Status (Geneva, 1979)." 480 U.S. 421, 437-39 (1987). The decision also says that, "the Handbook provides significant guidance in construing the Protocol, to which Congress sought to conform." *Id.* at 439, n.22. Notably, UNHCR's *Guidelines on International Protection: Child Asylum Claims Under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees* states,

As with gender, age is relevant to the entire refugee definition. As noted by the UN Committee on the Rights of the Child, the refugee definition: . . . must be interpreted in an age and gender-sensitive manner, taking into account the particular motives for, and forms and manifestations of, persecution experienced by children. Persecution of kin; under-age recruitment; trafficking of children for prostitution; and sexual exploitation or subjection to female genital mutilation, are some of the child-specific forms and manifestations of persecution which may justify the granting of refugee status if such acts are related to one of the 1951 Refugee Convention grounds. States should, therefore, give utmost attention to such child-specific forms and manifestations of persecution as well as gender-based violence in national refugee status-determination procedures.

Elements of an asylum claim—An individual must be:

- Unable or unwilling to return to their home country because they
- Either suffered past persecution OR have a well-founded fear of future persecution
- Perpetrated by the government OR an entity the government cannot or will not control
- On account of (nexus) one of the five protected grounds (actual or imputed⁷⁹):
 - Race
 - Religion
 - Nationality
 - Membership in a particular social group (PSG)
 - Political opinion⁸⁰
- Additionally, they must merit favorable discretion⁸¹ and must not be subject to any bars to asylum.



79 While most claims involving an imputed protected ground involve political opinion, other protected grounds can be imputed as well. *See, e.g., R-A-E-*, AXXX XXX 933 (BIA Dec. 28, 2016) (granting withholding of removal based on particular social group of “imputed homosexual(s)” for a man from El Salvador); *J-C-J-*, AXXX XXX 315 (BIA May 29, 2019) (finding a man suffered past persecution on account of an imputed nationality, where he was a Mexican national, but the police might have mistaken him to be a United States citizen).

80 According to the UNHCR,

The application of the Convention ground of ‘political opinion’ is not limited to adult claims. A claim based on political opinion presupposes that the applicant holds, or is assumed to hold, opinions not tolerated by the authorities or society and that are critical of generally accepted policies, traditions or methods. Whether or not a child is capable of holding a political opinion is a question of fact and is to be determined by assessing the child’s level of maturity and development, level of education, and his/her ability to articulate those views.

UNCHR, *Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, U.N. Doc HCR/GIP/09/08 (Dec. 22, 2009), <https://www.unhcr.org/media/guidelines-international-protection-no-8-child-asylum-claims-under-articles-1-2-and-1-f-1951>.

81 *See USCIS Policy Manual*, Vol 1., Pt. E, Ch. 8.

Asylum Key Sources of Law

- INA § 208; 8 U.S.C. § 1158
- INA § 101(a)(42)(A); 8 U.S.C. § 1101(a)(42)(A)
- INA § 209; 8 U.S.C. § 1159 (adjustment of status)
- 8 C.F.R. § 208.13
- Case Law—[Board of Immigration Appeals \(BIA\) decisions](#), Circuit Courts of Appeals decisions, Supreme Court decisions
- Persuasive Authorities:
 - Other Circuit Court decisions
 - International law—Treaties
 - [UNCHR Handbook on Procedures and Criteria for Determining Refugee Status & Guidelines on International Protection](#) (Particularly, see *UNHCR Guidelines on International Protection: Child Claims Under Articles 1(A)(2) and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees* starting on page 145.) See also *UNHCR's Views on Children's Asylum Claims: Using International law to support claims of children seeking protection in the United States*, Sept. 2022; *UNHCR's Views on Asylum Claims from Individuals Fleeing Violence by Gangs and Other Organized Criminal Groups in Central America and Mexico Using International Law to support claims of children seeking protection in the United States*, Sept. 2022. More information can be found on UNHCR's webpages on *U.S. Asylum Resources* and *Children's Claims*.
- Field Manuals and Agency Guidelines:
 - [USCIS Policy Manual](#) (replaced the USCIS Adjudicator's Field Manual)
 - USCIS Asylum Division [Affirmative Asylum Procedures Manual](#)
 - [EOIR Policy Manual](#) (includes Immigration Court Practice Manual, BIA Practice Manual, EOIR Memoranda, and more)
 - Asylum Officer Basic Training Course Lessons Modules. Search for the modules in USCIS's [Electronic Reading Room](#). Additionally, the *RAIO Combined Training Program Children's Claims Training Module* is very helpful.

FEES FOR ASYLUM APPLICATIONS

In 2025, the government introduced legislation and regulations to create a \$100 fee for filing an asylum application.⁸² They also introduced an “Annual Asylum Fee” of \$100 for anyone with a pending I-589 asylum application for each calendar year that the application remains pending.⁸³ Advocates oppose these fees, as they go against longstanding principles that anyone regardless of income should be able to seek asylum in the United States. It is possible that the fees may change as a result of policy updates or [litigation](#). Be sure to check the USCIS [website](#) and EOIR [website](#) for updates before filing. See [Section IV.C.](#) and [IV.D.](#) of the Guide for more information about how to pay an application fee with USCIS or in immigration court.

⁸² USCIS Alert, *USCIS Updates Fees Based on H.R.1* (July 18, 2025), <https://www.uscis.gov/newsroom/alerts/uscis-updates-fees-based-on-hr-1>.

⁸³ For more information about these fee changes, review ILRC's *HR1 Fees at USCIS and EOIR* (Sept. 18, 2025), CGRS's *Update: Summary of New Asylum Fees* (July 11, 2025), and ASAP's *There are new fees for asylum applications and work permits* (Dec. 4, 2025).

Asylum Law is a Dynamic Area of Law

As a result of rulemaking, policy changes, and case law, asylum law is a dynamic area of law with frequent changes. **You must constantly check for updates.** This Guide presents information on asylum law that is current at the time of publication, but there are ongoing efforts to limit access to asylum. In the past, many policy changes have excluded unaccompanied children, yet even those can indirectly affect them. Litigation often follows policy or legal changes and that further leads to uncertainty in this area of law as there may be proposed regulations or laws that are blocked from going into effect. It is important to review additional resources and conduct additional research before filing an asylum case to ensure you are familiar with the most up to date policies and laws.

A NOTE ABOUT SPECIAL RULES FOR UNACCOMPANIED CHILDREN & EXPEDITED REMOVAL

This Guide is focused on children's immigration cases, and in particular unaccompanied children's cases. Unaccompanied children have special protections that are highlighted throughout the Guide. For example, unaccompanied children should not be placed in expedited removal.⁸⁴ This is an important protection because expedited removal is increasingly being used to limit access to asylum and to deport adults if they are unable to pass a credible fear interview.⁸⁵ When working on an unaccompanied child's case, you must always determine if and how any change in asylum law applies to unaccompanied children. You should also know if there are any circumstances in which a client can lose the unaccompanied child designation, especially if they are turning 18 or reunifying with a parent or legal guardian. See the discussion of "[Where Should I File the Asylum Application?](#)" for more information about these issues and how the unaccompanied child designation can impact the asylum application process.

INELIGIBILITY GROUNDS & BARS

There are **several grounds of ineligibility** to filing for asylum.

- **Previous Asylum Application:** If an individual previously applied for and was denied asylum, they cannot reapply unless there are changed circumstances.⁸⁶ This also applies to unaccompanied children.
- **Safe Third Country:** This is not applicable to unaccompanied children. Typically, an individual can be removed to a country other than their own, in which the United States has a bilateral or multilateral agreement, if the individual's life or freedom would not be threatened on account of one of the five protected grounds in that country. Additionally, the individual must have access to a full and fair procedure to determine asylum or other protection within that country.⁸⁷
- **One-Year Filing Deadline:** Generally, asylum applications must be filed within one year after the date the individual arrived in the United States.⁸⁸ However, the one-year filing deadline is not applicable to unaccompanied children.⁸⁹

⁸⁴ See [Section II.A.](#) and [IV.C.](#); 8 U.S.C. § 1232(a)(5)(D) (requiring unaccompanied children to be placed in removal proceedings under section 240 of the INA).

⁸⁵ For more on expedited removal, review [Expedited Removal and Unaccompanied Children: An FAQ](#) (Nov. 2025), a resource created by CILA, NIPNLG, and ILRC, and the National Immigration Litigation Alliance (NILA)'s practice advisory, [Everything Expedited Removal](#), (Feb. 2025).

⁸⁶ INA § 208(a)(2)(C)-(D); 8 U.S.C. § 1158(a)(2)(C)-(D).

⁸⁷ INA § 208(a)(2)(A), (E); 8 U.S.C. § 1158(a)(2)(A), (E).

⁸⁸ INA § 208(a)(2)(B); 8 U.S.C. § 1158(a)(2)(B).

⁸⁹ INA § 208(a)(2)(E); 8 U.S.C. § 1158(a)(2)(E).

There are also **several bars** to obtaining asylum.

- **Persecution of Others:** An individual who participated in persecution of others on account of one of the five grounds is barred from obtaining asylum.⁹⁰
- **Particularly Serious Crime Conviction:** An individual who was convicted of a particularly serious crime is barred from obtaining asylum.⁹¹
- **Nonpolitical Crime:** If there is reason to believe an individual committed a serious nonpolitical crime outside of the United States, the individual is barred from obtaining asylum.⁹²
- **Danger to U.S. Security:** If there are reasonable grounds that an individual is a danger to U.S. security, then the individual will be barred from obtaining asylum.⁹³
- **Terrorism-Related Grounds:** An individual can be barred from obtaining asylum based on terrorism-related grounds.⁹⁴
- **Firm Resettlement:** Asylum is barred if an individual firmly resettled in another country prior to arriving in the United States.⁹⁵

TIP: Having prior involvement with certain gangs could raise concerns about terrorism-related bars to obtaining asylum. Some gangs have been designated as global terrorists by the federal government.⁹⁶ Check if there have been updates to these designations and be sure to ask your client about any potential gang involvement, especially if it is going to be part of the facts supporting their asylum claim. For more information, review CLINIC’s [FAQ](#) on the designation of foreign terrorist organizations and the impact on asylum seekers.

BURDENS OF PROOF

An applicant has the burden to prove they are a refugee as defined by the INA.⁹⁷ An individual can establish asylum eligibility by proving that they suffered persecution or that they have a well-founded fear of persecution on account of one of the five protected grounds. If an applicant proves they suffered past persecution, it is presumed that they have a well-founded fear of persecution on that same basis.⁹⁸

If the applicant meets their burden, it becomes the government’s burden to rebut the presumption of a well-founded fear of persecution by showing by a preponderance of the evidence that, (1) “[t]here has been a fundamental change in circumstances such that the applicant no longer has a well-founded fear of persecution in the applicant’s country of nationality”⁹⁹ or (2) “[t]he applicant could avoid future persecution by relocating to another part of the applicant’s country of nationality.”¹⁰⁰ For the second option, the internal relocation must be *reasonable*.¹⁰¹ In determining reasonableness, factors such as “whether the applicant would face other serious harm in the place of suggested relocation; any ongoing civil strife within the country; administrative, economic, or judicial infrastructure; geographic limitations; and social and

90 INA § 208(b)(2)(A)(i); 8 U.S.C. § 1158(b)(2)(A)(i).

91 INA § 208(b)(2)(A)(ii); 8 U.S.C. § 1158(b)(2)(A)(ii).

92 INA § 208(b)(2)(A)(iii); 8 U.S.C. § 1158(b)(2)(A)(iii).

93 INA § 208(b)(2)(A)(iv); 8 U.S.C. § 1158(b)(2)(A)(iv).

94 INA § 208(b)(2)(A)(v); 8 U.S.C. § 1158(b)(2)(A)(v).

95 INA § 208(b)(2)(A)(vi); 8 U.S.C. § 1158(b)(2)(A)(vi). *Matter of A-G-G-*, 25 I&N Dec. 486 (BIA 2011); *Matter of K-S-E-*, 27 I&N Dec. 818 (BIA 2020).

96 See Presidential Action, “Designating Cartels And Other Organizations As Foreign Terrorist Organizations And Specially Designated Global Terrorists” (Jan. 20, 2025).

97 INA § 208(b)(1)(B); 8 U.S.C. § 1158(b)(1)(B); 8 C.F.R. § 208.13(a).

98 8 C.F.R. § 208.13(b)(1).

99 8 C.F.R. § 208.13(b)(1)(i)(A). Keep in mind a change in personal circumstances can include changes in age and becoming an adult. *E.g. Hui v. Holder*, 769 F.3d 984, 987 (8th Cir. 2014) (“We conclude that substantial evidence supports the determination by the IJ and the BIA that Hui’s age was a fundamental change in circumstances such that her life or freedom would not be threatened if she returned to Hong Kong.”).

100 8 C.F.R. § 208.13(b)(1)(i)(B).

101 8 C.F.R. § 208.13(b)(3).

cultural constraints, such as age, gender, health, and social and familial ties” should be considered.¹⁰² For children, USCIS training materials instruct that “[i]t is generally not reasonable to expect a child to internally relocate by himself or herself; however, you should examine whether circumstances show that internal relocation would be reasonable.”¹⁰³

A NOTE ABOUT PRETERMISSION & PAUSES ON ADJUDICATION

Pretermission occurs when an immigration judge (IJ) denies an application without considering the merits of the claims for legal relief. Under current Board of Immigration Appeals (BIA) precedent, IJs have the authority to pretermit asylum applications that are incomplete and are not required to hold an evidentiary hearing before pretermitting an incomplete application.¹⁰⁴ According to the BIA, “[a] complete Form I-589 requires a specific substantive answer to every question on the form.”¹⁰⁵ EOIR issued updated pretermission guidance that encouraged IJs to pretermit “legally insufficient” asylum applications.¹⁰⁶ Unaccompanied children’s asylum applications are often adjudicated by an asylum officer with USCIS—not an IJ under EOIR.¹⁰⁷ However, all practitioners should be aware of the current policies and case law governing pretermission.¹⁰⁸ Another recent concern with processing asylum applications is the [announcement](#) in November 2025 that the government is pausing all adjudications of asylum applications. This is a developing issue, and advocates will need to check for updates.

CREDIBILITY

Credibility is always at issue in an asylum case. The decision maker will determine your client’s credibility by their statements in the I-589 application, declaration, and evidence in the packet submitted. Statements given during any testimony in immigration court or during an asylum interview will also be assessed to determine your client’s credibility.¹⁰⁹ Consistent truthful statements are imperative. An applicant’s “own testimony in an asylum case may be sufficient, without corroborative evidence, to prove a well-founded fear of persecution where that testimony is believable, consistent, and sufficiently detailed to provide a plausible and coherent account of the basis for his fear.”¹¹⁰ It is also important to know there are significant consequences if it is determined that your client has “knowingly made a frivolous application.”¹¹¹ In this situation, the applicant will be permanently ineligible from any immigration benefit under the Act, except withholding of removal.¹¹² “[A]n asylum application is frivolous if any of its material elements is deliberately fabricated.”¹¹³

102 8 C.F.R. § 208.13(b)(3).

103 RAI0 Directorate, *RAIO Combined Training Program Children’s Claims Training Module*, USCIS (Dec. 6, 2024), at 51-52, https://www.uscis.gov/sites/default/files/document/foia/Childrens_Claims_LP_RAIO.pdf; see also UNHCR, *Guidelines on International Protection: Child Asylum Claims under Articles 1(A)(2) and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, U.N. Doc. HCR/GIP/09/08 (Dec. 22, 2009), <https://www.unhcr.org/50ae46309.html>.

104 See *Matter of C-A-R-R*, 29 I&N Dec. 13, 15 (BIA 2025) (“However, even where a Form I-589 is submitted to the Immigration Judge within the time permitted, the Immigration Judge is not required to consider it on the merits if it is incomplete.”); *Matter of H-A-V-V*, 29 I&N Dec. 233, 235 (BIA 2025) (“Immigration Judges are not required to hold merit hearings on applications that are incomplete or where an applicant is ineligible for relief and may pretermit those applications.”).

105 *Matter of C-A-R-R*, 29 I&N Dec. at 16 (citing 8 C.F.R. § 1208.3).

106 EOIR PM 25-28, *Pretermission of Legally Insufficient Applications for Asylum* (Apr. 11, 2025).

107 See the box in this Guide on “[Where Should I File the Asylum Application?](#)”

108 For more information about pretermission and the 2025 changes, review NIPNLG’s and CGRS’s *Fighting for a Day in Court: Understanding and Responding to Pretermission of Asylum Applications* (July 25, 2025) and CLINIC’s practice tips in *BIA Issues Guidance for Proper Completion of Asylum Applications* (Apr. 28, 2025).

109 See RAI0 Directorate, *RAIO Combined Training Program Children’s Claims Training Manual* at 38-43. Additionally, the USCIS training manual for children’s claims states that, “[t]he child may be unable to present testimony concerning every fact in support of the claim, not because of a lack of credibility, but owing to age, gender, cultural background, or other circumstances.” *Id.* at 41.

110 *Matter of Mogharrabi*, 19 I&N Dec. 439, 439 (BIA 1987).

111 8 C.F.R. § 208.20. See also *Matter of Y-L*, 24 I&N Dec. 151 (BIA 2007).

112 INA § 208(d)(6); 8 U.S.C. § 1158(d)(6).

113 8 C.F.R. § 208.20(a)(1).

Common Issues Impacting Unaccompanied Children

ONE-YEAR DEADLINE

Generally, applicants must submit an asylum application within one year of entry into the country.¹¹⁴ However, this one-year rule does not apply to unaccompanied children.¹¹⁵ If a child loses status as an unaccompanied child, then they also lose this exception. Therefore, best practice is to apply for asylum within one year of entry, and, if possible, before the unaccompanied child turns 18. If your child client is not designated as an unaccompanied child or loses the unaccompanied child designation¹¹⁶ and misses the one-year deadline, then it is important to consider whether there are any applicable exceptions. Exceptions to the one-year filing deadline include “the existence of changed circumstances” (e.g., change in country conditions or a change in the applicant’s circumstances) or “extraordinary circumstances relating to the delay.”¹¹⁷ One example of “extraordinary circumstances” in the asylum regulations is a “[l]egal disability (e.g., the applicant was an unaccompanied minor or suffered from a mental impairment) during the 1-year period after arrival.”¹¹⁸ It is important to argue age and competency as an extraordinary circumstance as a reason for the delay, if applicable. For more information, read ILRC’s practice advisory *Unaccompanied Children and the One-Year Filing Deadline*.

WHAT IS PERSECUTION?

Persecution can take many forms and is something that is determined by case law, so research is important to make factual comparisons. Generally, persecution has been defined as “a threat to the life or freedom of, or the infliction of suffering or harm upon, those who differ in a way regarded as offensive.”¹¹⁹ *Matter of Acosta* goes on to say that the “harm or suffering must be inflicted upon an individual in order to punish him for possessing a belief or characteristic a persecutor seeks to overcome.”¹²⁰ Persecution can include physical harm, such as beatings, kidnappings, sexual harm, torture, forced labor, or emotional harm or harm to one’s psychological or emotional health such as threats or bigotry. Depending on your Circuit Court of Appeals jurisdiction, threats without other harm can sometimes be considered past persecution, but it is important to consider the surrounding circumstances to prove that it rises to the level of persecution.¹²¹ Also, review *Matter of E-M-F-S* when considering whether a death threat could rise to persecution.

An individual could also experience persecution as a result of family members or caregivers being harmed or witnessing others who are close to them being harmed. Also, consider any ongoing emotional trauma or effects of the persecution such as Post Traumatic Stress Disorder (PTSD) symptoms or a diagnosis of a mental health disorder.¹²²

114 INA § 208(a)(2)(B); 8 U.S.C. § 1158(a)(2)(B).

115 INA § 208(a)(2)(E); 8 U.S.C. § 1158(a)(2)(E).

116 See the box “Where Should I File the Asylum Application?” to learn more about designation issues.

117 INA § 208(a)(2)(D); 8 U.S.C. § 1158(a)(2)(D). See also 8 C.F.R. § 208.4(a)(4)-(6).

118 8 C.F.R. § 208.4(a)(5)(ii). See also A-D-, AXXX XXX 526 (BIA May 22, 2017) (BIA remanded to consider whether respondent suffered from an extraordinary circumstance, after finding that all applicants under age 18 suffer from a per se “legal disability” and that youth between the age of 18 and 21 is a factor to be considered in whether the extraordinary circumstance exception is met).

119 *Matter of Acosta*, 19 I&N Dec. 211, 222 (BIA 1985).

120 *Id.*

121 See, e.g., *N.L.A. v. Holder*, 744 F.3d 425, 431 (7th Cir. 2014) (“This court has declared, however, that credible threats of imminent death or grave physical harm can indeed be sufficient to amount to past persecution, provided they are credible, imminent and severe.” (citation omitted)); *Duran-Rodriguez v. Barr*, 918 F.3d 1025, 208 (9th Cir. 2019) (“We have been most likely to find persecution where threats are repeated, specific, and combined with confrontation or other mistreatment.” (citation omitted)); *Qorane v. Barr*, 919 F.3d 904, 910 (5th Cir. 2019) (“We have previously treated death threats as a question of future—not past—persecution.” (citation omitted)).

122 Review CILA’s *Working with Unaccompanied Children: Mental and Behavioral Health Toolkit* to learn more about mental and behavioral health and how PTSD or other mental conditions may manifest, so you can recognize the signs and symptoms.

In addition, the BIA has recognized that persecution can sometimes be in the form of economic harm: “Nonphysical forms of harm, such as the deliberate imposition of severe economic disadvantage or the deprivation of liberty, food, housing, employment, or other essentials of life, may amount to persecution.”¹²³

Where Should I File the Asylum Application?

An unaccompanied child’s I-589 asylum application should be filed with USCIS. Under the TVPRA, USCIS has initial jurisdiction over unaccompanied children’s asylum applications even when they are in removal proceedings. Having USCIS adjudicate the application first allows unaccompanied children to go through a non-adversarial process by interviewing with an asylum officer.

If the unaccompanied child is also in removal proceedings, then you will also likely want to consider procedural options to have the case put on hold or closed while the asylum application is adjudicated by USCIS. These are discussed in more detail in [Section IV.C](#).

The jurisdictional issues become more complicated if the unaccompanied child has turned 18 years old or reunified with a parent or legal guardian. The BIA held in *Matter of M-A-C-O-*, 27 I&N Dec. 477 (BIA 2018) that an immigration judge can have initial jurisdiction over an asylum application filed by a respondent who was previously determined to be an unaccompanied child and turn 18 before filing their application. In 2025, the *J.O.P. v. D.H.S.* litigation led to an [updated memo](#) from USCIS released in February 2025 and a [follow up memo](#) released in October 2025 that should be used for determining initial jurisdiction and that distinguish between cases in which an asylum applicant has been previously determined to be an unaccompanied child for jurisdictional purposes and those that are in removal proceedings. The *J.O.P. v. D.H.S.* settlement in November 2024 also resulted in additional protections for class members who include unaccompanied children with asylum applications on file with USCIS by February 24, 2025 who were 18 years of age or older or had a parent or legal guardian in the United States available to provide care and physical custody when they filed their asylum application.

Take a look at these resources to learn more:

- National Immigration Project (NIPNLG), *Practice Advisory: Navigating the Removal Proceedings of J.O.P. Class Members and Other Asylum Seekers with Prior Unaccompanied Child Determinations*
- ILRC, *Who Has Initial Jurisdiction Over UC Asylum Claims? Matter of M-A-C-O- and JOP v. DHS*
- CILA, *Unaccompanied Children (UC) Asylum Filing Flow Chart*

¹²³ *Matter of T-Z-*, 24 I&N Dec. 163 (BIA 2007). According to UNHCR, “[a] violation of an economic, social or cultural right may amount to persecution.” UNHCR’s *Guidelines on International Protection: Child Asylum Claims Under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees* ¶ 35. Moreover, “[m]easures of discrimination may amount to persecution when they lead to consequences of a substantially prejudicial nature for the child concerned. Children who lack adult care and support, are orphaned, abandoned, or rejected by their parents, are escaping violence in their homes may be particularly affected by such forms of discrimination.” *Id.* ¶ 36.

EXPERIENCING HARM AS A CHILD

Whether an adult or child, the cumulative harm of an individual seeking asylum should be considered when determining whether they had past persecution.¹²⁴ Therefore, it is important to raise each harm your client suffered.

When working with youth, their age is also important when determining if they suffered past persecution. Arguments related to age can be raised even if your client is currently of majority but experienced harm as a child. According to the United Nations High Commissioner for Refugees' (UNHCR) *Guidelines on International Protection: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*:

While children may face similar or identical forms of harm as adults, they may experience them differently. Actions or threats that may not reach the threshold of persecution in the case of an adult may amount to persecution in the case of a child because of the mere fact that s/he is a child. Immaturity, vulnerability, undeveloped coping mechanisms and dependence as well as the differing stages of development and hindered capacities may be directly related to how a child experiences or fears harm.¹²⁵

USCIS similarly has trained officers to “determine the age of the applicant at the time the harm occurred and determine if age is a factor that should be considered” when assessing whether harm arises to the level of persecution.¹²⁶ Moreover, many federal courts have acknowledged that children experience events differently than adults and that age can be an important factor when assessing an asylum claim and witness credibility. Some examples include:

- *Saban-Cach v. Garland*, 58 F. 4th 716, 729-30 (3d Cir. 2023): “[A]ge can be a critical factor in determining whether a petitioner’s experiences meet the threshold of past persecution.”
- *Ordonez-Quino v. Holder*, 760 F.3d 80, 92 (1st Cir. 2014): “Because the BIA failed to address the harms Ordonez–Quino and his family experienced cumulatively and from the perspective of a child, its determination is not supported by substantial evidence in the record.”
- *Hernandez-Ortiz v. Gonzales*, 496 F.3d 1042, 1045 (9th Cir. 2007): “[A]ge can be a critical factor in the adjudication of asylum claims and may bear heavily on the question of whether an applicant was persecuted or whether she holds a well-founded fear of future persecution.”
- *Jorge-Tzoc v. Gonzales*, 435 F.3d 146, 150 (2d Cir. 2006): Noted that respondent due to his age was “necessarily dependent on both his family and his community.”
- *Liu v. Ashcroft*, 380 F.3d 307, 314 (7th Cir. 2004): “There may be situations where children should be considered victims of persecution though they have suffered less harm than would be required for an adult.”
- *Abay v. Ashcroft*, 368 F.3d 634, 640 (6th Cir. 2004): Cited UNHCR guidance on children’s testimony and that asylum adjudicators should “keep[] in mind that very young children may be incapable of expressing fear to the same degree or with the same level of detail as an adult.”

124 “[A noncitizen] who suffered repeated beatings and received multiple handwritten anti-Semitic threats, whose apartment was vandalized by anti-Semitic nationalists, and whose son was subjected to degradation and intimidation on account of his Jewish nationality established that he has suffered harm which, in the aggregate, rises to the level of persecution as contemplated by the Immigration and Nationality Act.” *Matter of O-Z- & I-Z-*, 22 I&N Dec. 32 (BIA 1998).

125 UNCHR’s *Views on Children’s Asylum Claims* (Sept. 2022) similarly recognizes how children can experience harm differently. See also RAIIO Directorate *RAIO Combined Training Program Children’s Claims Training Manual*, USCIS (Dec. 20, 2019) at 44-48.

126 RAIIO Directorate, *RAIO Combined Training Program Definition of Persecution and Eligibility Based on Past Persecution*, USCIS (Jan. 30, 2025), at 16, https://www.uscis.gov/sites/default/files/files/nativedocuments/Persecution_LP_RAIO.pdf.

Humanitarian Asylum

If an applicant suffered past persecution but does not have a well-founded fear of future persecution, the decision maker has discretion to grant asylum if the applicant suffered severe past persecution¹²⁷ or if the applicant shows that there is a reasonable possibility that they may suffer other serious harm upon removal.¹²⁸ An applicant must still be able to prove the other requirements for asylum including nexus to a protected ground.

If your client suffered past persecution, it is best practice to include an alternative argument for humanitarian asylum in briefing to protect the record.

TIP: Typically, you do not want to make an argument only for humanitarian asylum because if your client suffered past persecution, then it is the government's burden to rebut the presumption of a well-founded fear of future persecution. If the government does rebut the presumption of a well-founded fear of future persecution, having an alternative argument for humanitarian asylum already included in briefing preserves this argument if it is needed. However, humanitarian asylum is generally not the primary or only argument.

WELL-FOUNDED FEAR OF FUTURE PERSECUTION

An applicant must show based on the objective and subjective evidence that “a reasonable person in his circumstances would fear persecution.”¹²⁹ Additionally, “[a]n applicant does not have a well-founded fear of persecution if the applicant could avoid persecution by relocating to another part of the applicant's country of nationality or, if stateless, another part of the applicant's country of last habitual residence, if under all circumstances it would be reasonable to expect the applicant to do so.”¹³⁰

TIP: If your client moved to a different area of their home country, but the persecutor still sought after them or harmed them again, this can be helpful evidence to show that they are at risk anywhere in their country. Additionally, if they are sought after or family members are harmed after they came to the United States, this supports the argument that the risk persists and that they have a well-founded fear. If this is the case, you can develop evidence such as letters from family members or neighbors with knowledge that they were being sought after or that further harm occurred to someone close to them.

It is important to note that the standard for a well-founded fear is not “more likely than not”; in fact, if there is a 1 in 10 chance that the event would happen, then this is enough to show a well-founded fear.¹³¹ As you can see, this burden is quite low compared to burdens of proof in other types of cases.

127 See *Matter of Chen*, 20 I&N Dec. 16 (BIA 1989). See also unpublished opinions: *Y-H-*, AXXX XXX 948 (BIA Sept. 24, 2020) (granted asylum to Chinese respondent based on severity of past persecution where respondent was victim of two forcible abortions); *F-K-*, AXXX XXX 026 (BIA Jan. 16, 2020) (granted asylum to Ethiopian respondent who underwent female genital mutilation (FGM) as a child and was unable to engage in personal relationships with men and continued to experience mental anguish); *A-A-O-*, AXXX XXX 913 (BIA Apr. 4, 2019) (reversed denial of humanitarian asylum to Nigerian respondent who was physically and sexually assaulted by multiple men); *C-M-J-*, AXXX XXX 286 (BIA Feb. 21, 2019) (remanded to consider humanitarian asylum for Guatemalan respondent who experienced abuse by her father). More unpublished decisions are available through the Immigrant & Refugee Center's *Index of Unpublished Decisions of the Board of Immigration Appeals*.

128 See *Matter of L-S-*, 25 I&N Dec. 705 (BIA 2012). 8 C.F.R. § 208.13(b)(1)(iii).

129 See *Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987)

130 8 C.F.R. 208.13(b)(2)(ii).

131 *INS v. Cardoza-Fonseca*, 480 U.S. 421, 440 (1987).

The BIA recognizes four criteria that must be shown for an individual to establish an individualized well-founded fear including:

(1) the [applicant] possesses a belief or characteristic a persecutor seeks to overcome in others by means of punishment of some sort; (2) the persecutor is already aware, or could easily become aware, that the [applicant] possesses this belief or characteristic; (3) the persecutor has the capability of punishing the [applicant]; and (4) the persecutor has the inclination to punish the [applicant].¹³²

The applicant does *not* have to show they would be “singled out individually for persecution.”¹³³ It is enough to show a “pattern or practice . . . of persecution of a group of persons similarly situated to the applicant” if the persecution is on account of one of the five protected grounds and the applicant can show that they are included in that group of persons so “fear of persecution upon return is reasonable.”¹³⁴

WHO IS THE PERSECUTOR: THE GOVERNMENT OR A PRIVATE ACTOR?

When talking with your client, it is important to understand from your client whom they fear and who is the persecutor. Is it the government or an employee of the government? Is it someone else like a gang member or family member? Or does your client fear both the government and a private (non-governmental) actor? If your client fears a private actor, then the question becomes whether the government in their country of origin is able and willing to control the persecutor.¹³⁵

Here, country conditions reports and perhaps a country conditions expert become important to help establish that the government is unable or unwilling to control the persecutor. Expert testimony, reports, and/or articles can show evidence of corruption, impunity, pervasive problems, inadequate protection, lack of enforcement, and other government-involved criminal acts and violence.

Another issue that may arise is whether and to what extent past harm was reported to the government. While adjudicators often ask questions about this and it can be relevant, keep in mind that reporting a past harm is not required. This may be especially true when working with children. USCIS training materials provide that “[r]easonable explanations for why a child did not seek protection” may include evidence that the “applicant was so young that he or she would not have been able to seek government protection,” the “government has shown itself unable or unwilling to act in similar situations,” or the “applicant would have increased his or her risk by affirmatively seeking protection.”¹³⁶ Additionally, the BIA determined in *Matter of C-G-T-*, 28 I&N Dec. 740 (BIA 2023), that “[a] respondent’s failure to report harm is not necessarily fatal to a claim of persecution if the respondent can demonstrate that reporting private abuse to governmental authorities would have been futile or dangerous.” In that decision, the BIA also stated that these are “fact-specific inquiries” and acknowledged “that there may be a substantial difference in the ability of a young child to report abuse or recognize mistreatment as abuse, as compared to an older child” or compared to an adult.

¹³² *Matter of Acosta*, 19 I&N Dec. at 226. The BIA confirmed these requirements in *Matter of Mogharrabi*, 19 I&N Dec. at 446.

¹³³ 8 C.F.R. § 208.13(b)(2)(iii).

¹³⁴ *Id.*

¹³⁵ In recent years, advocates looked at the decision in *Matter of A-B- III*, 28 I&N Dec. 307 (A.G. 2021) in assessing private actor harm and the ability of the government to protect the applicant. However, *Matter of S-S-F-M-*, 29 I&N Dec. 207 (A.G. 2025) has since restored the prior Attorney General decisions in *Matter of A-B- I*, 27 I&N Dec. 316 (A.G. 2018) and *Matter of A-B- II*, 28 I&N Dec. 199 (A.G. 2021) as the relevant standards. Review CILA’s resource on *Particular Social Groups (PSGs) and Unaccompanied Children* for more information about these cases.

¹³⁶ RAI0 Directorate, *RAIO Combined Training Program Children’s Claims Training Module*, USCIS (Dec. 6, 2024), at 4-50.

Nexus and Mixed Motives

Nexus is the connection between the persecution/harm feared and the protected ground. It is the “why,” the “because of,” the “on account of.” You must prove the connection; how your client knows or believes the past persecution or feared persecution is because of the protected ground.¹³⁷ The persecutor can have mixed motives for causing harm to the applicant.¹³⁸ The law requires that one of the five protected grounds “be at least one central reason for persecuting the applicant.”¹³⁹



Fact-Gathering and Developing Evidence Internationally

If you need support or a connection internationally to gather evidence or obtain a document, for example, then you may want to contact an organization such as [Justice in Motion](#) or [Keep Families Together](#) to assist. CILA's resource [Highlight on Resources & Services to Support Pro Bono Attorneys](#) provides more information about both programs.

137 “[S]ome evidence of it [the persecutor’s motive], direct or circumstantial” is required. *INS v. Elias-Zacarias*, 502 U.S. 478 (1992). The RAIO Directorate states asylum officers should consider a child’s age and maturity when assessing how they articulate their claims and includes the possibility that children will have a lack of understanding of the situation or an inability to articulate nexus during testimony. In this case, evidence other than the child’s testimony will be necessary, such as supporting letters, country conditions evidence, and/or expert testimony and/or declaration. See *RAIO Combined Training Program Children’s Claims Training Module*, USCIS (Dec. 20, 2019), at 52-53.

138 The specific requirements for showing nexus can vary by jurisdiction and may look different depending on the basis of the asylum claim. See, e.g., *CGRS, O.C.V. v. Bondi: Tenth Circuit Vacates Matter of M-R-M-S-* (Aug. 27, 2025) (summarizing a Tenth Circuit decision that vacated the BIA’s decision in *Matter of M-R-M-S-* and noting that other circuits may follow this approach to mixed motives or may have taken a different approach especially with regard to family-based claims).

139 INA § 208(b)(1)(B)(i); 8 U.S.C. § 1158(b)(1)(B)(i).

CRAFTING A PARTICULAR SOCIAL GROUP

Generally¹⁴⁰, a particular social group (PSG) delineation requires:

- Members of the group share an immutable characteristic¹⁴¹
- The group must be defined by particularity¹⁴²
- The group must be socially distinct within the society in question¹⁴³

If you are in immigration court, then you will likely be subject to the “exact delineation” requirement, which means the respondent must “clearly indicate” before the immigration judge “the exact delineation of any particular social group(s) to which she claims to belong.”¹⁴⁴ An appeal of the IJ’s asylum decision to the BIA may also be limited to PSGs that were delineated before the IJ.¹⁴⁵ Regardless of where the asylum claim is being heard—an asylum office or immigration court—delineating several PSGs for the decision maker to consider is often necessary to preserve the record. It is also important to brief each proposed PSG with supporting arguments. Read more in CILA’s resource on *Particular Social Groups (PSGs) and Unaccompanied Children*.

TIPS WHEN CRAFTING A PARTICULAR SOCIAL GROUP

- When thinking about how to delineate your PSG, consider why the applicant was targeted. Consider all PSG delineations.
- Common PSGs relating to children include: family-based claims, domestic violence/child abuse claims, gender-based claims, gang-related claims, and LGBTQ+ claims. Do not limit yourself to these, but it helps to consider them as a starting point. Keep in mind that the case law surrounding how to craft a PSG in these types of cases tends to be complicated and will need to be researched closely to determine whether there is a viable claim.
- Generally, do not define the group by the harm suffered. Try to avoid circular arguments and articulate a PSG with characteristics of why they were targeted. There might be situations where including the past harm is necessary because it causes the individual to be at risk of future harm.
- Look for ways to frame your case based on an *established* PSG based on case law.
- Remember you can (and likely should) propose several PSGs or several delineations of a PSG.
- Look for alternative ways to frame your case based on one of the other four protected grounds (i.e., nationality, race, political opinion, and/or religion). PSG is the broadest protected ground so there is more room to make an argument, but it is often more challenging to be successful on this basis. Therefore, it is important to consider if another protected ground applies.

140 The Seventh Circuit has deferred to the BIA’s approach in *Matter of Acosta*, 19 I&N Dec. 211 (BIA 1985) rather than using social distinction/visibility and particularity tests. See *Cece v. Holder*, 733 F.3d 662 669 (7th Cir. 2013) (citing *Matter of Acosta* and noting that a PSG is “defined by a characteristic that is either immutable or is so fundamental to individual identity or conscience that a person ought not be required to change”); *W.G.A. v. Sessions*, 900 F.3d 957, 964 (7th Cir. 2018) (“Whether the Board’s particularity and social distinction requirements are entitled to *Chevron* deference remains an open question in this circuit.”).

141 *Matter of Acosta* defines immutability as “a characteristic that either is beyond the power of the individual members of the group to change or is so fundamental to their identities or consciences that it ought not to be required to be changed.” 19 I&N Dec. 211 (BIA 1985).

142 “The group must also be discrete and have definable boundaries—it must not be amorphous, overbroad, diffuse, or subjective.” *Matter of W-G-R*, 26 I&N Dec. 208 (BIA 2014).

143 *Matter of M-E-V-G* clarifies “that literal or ‘ocular’ visibility is not required” and that “a group’s recognition for asylum purposes is determined by the perception of the society in question, rather than by the perception of the persecutor.” 26 I&N Dec. 227 (BIA 2014).

144 *Matter of W-Y-C- & H-O-B-*, 27 I&N Dec. 189, 191 (BIA 2018) (internal quotation marks and citation omitted). See also *Cantarero-Lagos v. Barr*, 924 F.3d 145, 151 (5th Cir. 2019) (“[T]he BIA’s acknowledgement that applicants have a responsibility to articulate their PSG to the IJ does not in any way impede IJs’ ability to assist applicants in carrying out [their] responsibility.”).

145 The BIA typically has discretion to remand for consideration of additional PSGs and may be required to do so in some circumstances. See, e.g., *Quintero v. Garland*, 998 F.3d 612, 635-36 (4th Cir. 2021) (recognizing that the “exact delineation” requirement should not apply to a pro se asylum seeker and that “where the Board of Immigration Appeals finds that an immigration judge failed to probe into and consider a potential social group supported by the applicant’s circumstances, it usually must remedy the error by remanding the case for further factfinding and consideration of that group.” (footnotes omitted)).

TIPS TO DEVELOP AN ASYLUM CASE

Know the Facts:

- Review the file. Do your due diligence to check the facts. Consider conducting Freedom of Information Act (FOIA) requests or reviewing the court's file, if applicable. See [Section IV.C.](#) for more information and resources on conducting FOIAs.
- Due diligence should include a review of a client's social media accounts. Review CILA's resource on [Ethics When Discussion Social Media with Your Immigration Client](#) (Apr. 4, 2025) for more information.
- Conduct research regarding your client's country of origin to have context for your meetings and to support their case. For example, conduct research on issues and trends that shed light on the risks and potential harms your client faces in their country of origin.
- Meet several times to develop rapport and trust with the child.
- Draft a declaration with the child. Give your client a choice whether to write the first draft of the declaration on their own or with you. Remember to consult the Guide for tips on trauma-informed lawyering and interviewing skills. See [Sections II.B.](#) and [II.C.](#)

Develop the Legal Theory:

- Is there past persecution?
 - What harm has your client suffered?
- Does your client have a well-founded fear of persecution?
 - What specifically is your client afraid will happen to them?
- Who is the actor involved in the harm or potential harm? A governmental actor or a non-governmental actor?
- Why was your client targeted? Why was your client specifically at risk for harm?
- What is the protected ground?
 - If PSG, what is that exactly?



TIPS TO DEVELOP AN ASYLUM CASE (continued)

Drafting the Application:

- Be prepared to file the I-589 and all submissions as soon as you can.
- Look at [USCIS's website](#) for the current I-589 application and instructions. Be sure to read the instructions. They are helpful!
- Do not leave any required aspect of the application blank. Use “N/A,” “None,” and “Unknown” as relevant. If you indicate you are including an attachment, do not forget it. In 2019 through late 2020, USCIS rejected I-589 applications as incomplete if they had any blank areas. As a result of [litigation](#) in *Vangala v. USCIS*, USCIS stopped this practice but their website warns that leaving a *required* space blank, failing to explain why the applicant is applying for asylum, leaving out addendums, or failing to sign the application may still lead to a rejection.
- If you need extra space, include this information in an attached addendum. You can use the government's forms or type it up on your own. Make sure your supplemental sheet has the client's name, A#, signature, and date, and be clear about what question you're answering.¹⁴⁶
- Double-check the application after finishing to confirm it is in final form.
 - Review the application a final time with your client to confirm information.
 - Ensure no aspect of the application is blank.
 - Ensure you also checked the box for withholding of removal under the Convention Against Torture (CAT) on the front page to preserve this option for your client. To learn more about withholding of removal and CAT relief, *see* [Section III.C](#).
 - Ensure the application is signed and dated by the applicant, person who prepared it, and interpreter (if one is being used to help complete the form).
 - Ensure you have attached all documents you indicated you would attach.
 - Remember everything must be in English and contain any necessary interpretation and translation certificates.¹⁴⁷

Drafting the Client's Declaration:

- This should be a statement signed and dated by your client. It does not need to be notarized.
- Honesty is paramount as your client's credibility will be assessed.
- The statement should provide details regarding the basis of their asylum claim, including any past harm suffered and why they fear returning. It should be detailed enough to be credible and instill confidence but not so detailed as to set your client up for inconsistent testimony later. Drafting requires a balancing act and may depend on the individual client's ability to recall certain kinds of detail.
- For more drafting tips, check out CILA's recorded webinar *Drafting Asylum Declarations for Children and Youth* (June 2025) and review CILA's resource on *Asylum, Withholding of Removal, and Protection Under the Convention Against Torture (CAT) Declarations* (July 2025).
- Remember the statement must be submitted to the asylum office or immigration court in English and you may need interpretation or translation certificates. Having a copy of the declaration in the child's best language in the official record may also help refresh their recollection when testifying.

¹⁴⁶ See [I-589 instructions](#). Check back often for updates related to the application form and instructions.

¹⁴⁷ See EOIR, [App. G](#) (Cert. of Translation).

TIPS TO DEVELOP AN ASYLUM CASE (continued)

Developing the Supporting Evidence: You will want to gather as much supporting evidence as possible to verify your client's testimony and familiarize yourself with the specific requirements under the Real ID Act.¹⁴⁸ As relevant and if applicable to the claim, consider the following documentary evidence to support your client's story:

- Does your client have documents to prove identity, such as a birth certificate, passport, ORR documentation, etc.?
- What documents can your client gather regarding other individuals on which your client's case is premised, such as a birth certificate, death certificate, marriage or divorce papers, etc.? (E.g., if your client's case is based on their maternal grandfather's death, try to obtain their mother's birth certificate and grandfather's death certificate to establish the familial relationship and substantiate his death and circumstances surrounding the death.)
- Are there news articles to show that your client or their family suffered harm?
- Are there health records to support the harm your client suffered? This could be physical health or mental health records including counseling records.
- Are there photos of injuries or scarring showing past harm your client or their family suffered?
- Are there school records to show that the child was missing school or struggling in school or getting help from a teacher or counselor?
- Can you get death certificate(s) to show that the death(s) your client informs you of occurred?
- Are there police reports to verify your client's story? If not, what were the barriers to making a police report? Is there evidence to show that as well? (E.g., statements, country conditions evidence, expert statements, etc.)
- Can you get statements from friends, neighbors, family, witnesses to corroborate your client's story?
- Is there evidence to support that your client's family owned a business that was being extorted?
- Is there evidence that your client's family owned land and were being targeted because of that?
- Is there evidence to show that your client's family was known in the community?
- Is there evidence to support that your client or their family was involved in a political party? Evidence regarding the party's goals? Party membership cards/certificates? Pamphlets regarding the party?
- Is there evidence to support that your client was a member of that religion? Baptism or communion photos or certificates? Evidence of other religious participation?
- Is there evidence to show your client's race/ethnicity whether perceived by others or as your client personally identifies?
- Asylum claims are discretionary.¹⁴⁹ If there are negative factors, is there any evidence to show that your client has positive equities that might sway an adjudicator?

CILA's Practice Toolkit: Check out the *CILA Practice Toolkit* for practice tips and checklists, cheat sheets, and documents designed to help advocates stay organized and get prepared for a case.

¹⁴⁸ See Immigration Equality, *Asylum Manual*, <https://immigrationequality.org/asylum/asylum-manual/immigration-basics-real-id-act/> (last visited Oct. 17, 2025).

¹⁴⁹ See *USCIS Policy Manual* Vol. 1, Pt. E, Ch. 8. and Vol. 7, Pt. A, Ch. 1 and 10.

TIPS TO DEVELOP AN ASYLUM CASE (continued)

Country Conditions Evidence: Include articles and country-specific reports to support your main points. For example, consider:

- Past persecution/well-founded fear of persecution: Is there evidence to support that the type of harm your client suffered or is afraid of occurs within the country?
- Is there evidence to support that there is impunity or corruption within the country?
- Nexus and protected ground:
 - Is there evidence to support why your client was targeted?
 - What were the persecutor's statements to your client?
 - Is there evidence to support that members of that political party were targeted for harm?
 - Is there evidence to support that members of that religion were targeted for harm?
 - Is there evidence to show that business owners were targeted for extortion?
 - Is there evidence to show that your client was persecuted or could be persecuted as an Indigenous person?
- Internal relocation:
 - Is there evidence to show that the harm your client suffered or is afraid of is widespread in the country?
 - Is there evidence to show that your client's country of origin is too small to make relocation worthwhile?
- If you are making a humanitarian asylum argument based on *other serious harm*, is there additional evidence you should submit to make that argument?

Country Conditions Experts:

- Is there an expert that can opine on any country conditions relevant to your client's claim and thereby strengthen your case? View Center for Gender and Refugee Studies' (CGRS) [Expert Witness Database](#) to find an expert and to access their [materials](#).
- Is there a subject matter expert that can provide expertise regarding a relevant issue in the case? For example, is there an expert that can provide an opinion on domestic violence and gender issues in context of that country or an expert on child development or mental health? Consider what would be helpful for your case.
- Check out CILA's recorded webinar on [Children's Asylum & Gang Related Crimes](#) to hear from a country conditions expert on gang-related issues in Honduras, Guatemala, and El Salvador.

Forensic Evaluations:

- If your client suffered past persecution, it may help to get a forensic evaluation to document any past trauma your client suffered; a physical evaluation to document any signs of beatings or torture such as scars, other injuries or female genital mutilation; or a mental health evaluation to assess the psychological impact of trauma.
- If you need help locating a physician to conduct a forensic evaluation, contact [Physicians for Human Rights](#) to request a forensic evaluation.

BENEFITS OF AN APPROVED ASYLUM APPLICATION

There are many benefits to being granted asylum. For instance, benefits include authorization to work, the ability to seek derivative status for certain family members,¹⁵⁰ a pathway to adjustment of status, and then citizenship. After one year in the United States, an asylee can apply for lawful permanent residency (a green card) using [Form I-485, Application to Register Permanent Residence or Adjust Status](#).¹⁵¹ Generally, a lawful permanent resident (LPR) can apply for U.S. citizenship after five years; however, an asylee can apply for citizenship after four years because their admission to lawful permanent resident is retroactive to the date of approval for asylee status.¹⁵² Asylees are eligible for other services and benefits for a limited period through ORR. View the [ORR website](#) for more information regarding these benefits.

WORK AUTHORIZATION & PENDING APPLICATIONS

Your client may be able to seek authorization to work while their asylum application is pending.¹⁵³ Asylum applicants can apply for work authorization under the (c)(8) category—though special filing instructions apply to asylum applicants with pending asylum applications.¹⁵⁴

Keep in mind that a waiting period may apply before the applicant can file the I-765.¹⁵⁵ [Section IV.D](#) provides additional information about how to apply for employment authorization if your client is eligible.

¹⁵⁰ INA § 208(b)(3); 8 U.S.C. § 1158(b)(3); 8 C.F.R. § 208.21.

¹⁵¹ INA § 209(b); 8 U.S.C. § 1159(b).

¹⁵² *Id.* INA § 316(a); 8 U.S.C. § 1427(a); 8 C.F.R. § 209.2.

¹⁵³ USCIS recognizes that “[i]f you are granted asylum you may work immediately. Some asylees choose to obtain Employment Authorization Documents (EADs) for convenience or identification purposes, but an EAD is not necessary to work if you are an asylee.” *Asylum*, USCIS, <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum> (last reviewed/updated Oct. 17, 2025).

¹⁵⁴ Refer to USCIS, *Special Filing Instructions for Those With Pending Asylum Applications—(c)(8)* of the [Form I-765 Instructions](#) and USCIS, *The 180-Day Asylum EAD Clock Notice* to learn more.

¹⁵⁵ On June 22, 2020, DHS issued a final rule removing the 30-day processing provision for asylum applicant-related employment authorization filings. On June 26, 2020, DHS issued a final rule changing asylum seekers’ ability to seek employment authorization. The rule went into effect on August 25, 2020. In general, the rule changed the amount of time asylum seekers must wait before initially applying for an employment authorization document and limits those who are eligible for work authorization. The U.S. District Court for the District of Maryland issued a [preliminary injunction](#) enjoining provisions of the rules relating to asylum seekers’ ability to obtain an employment authorization document as the rules pertain to members of the Asylum Seeker Advocacy Project (ASAP) and CASA de Maryland (CASA). Read more information about the case from ASAP on its webpage regarding [litigation updates](#). The case has now concluded. In February 2022, the U.S. District Court for the District of Columbia in *Asylumworks v. Mayaorkas* vacated both June 2020 final rules. Following the decision, DHS issued a new final rule on employment authorization for asylum applicants consistent with the court’s vacatur to restore prior regulations. Additional information is also on USCIS’s website regarding [restoration of the asylum regulations](#) and regarding Form I-765 in general.

Links to Help You with YOUR CLIENT'S ASYLUM CASE

- Check out CILA's 101 [webinar: Introduction to Asylum for Unaccompanied Children](#) (about 1 hour).
- Check out the [CILA Practice Toolkit](#) for practice tips and checklists, cheat sheets, and organizational preparation documents designed to help advocates stay organized and get prepared.
- Review CILA's webinar [Drafting Asylum Declarations for Children and Youth](#) (1 hour, 30 minutes), June 2025 and accompanying resource on [Asylum, Withholding of Removal, and Protection Under the Convention Against Torture \(CAT\) Declarations](#), July 2025.
- For help preparing for asylum office interviews, check out Section IV.D., watch CILA's webinar [Preparing for Asylum Interviews](#) (1 hour, 30 minutes), May 2025, and review CILA's resource [Trauma-Informed Representation in Asylum Cases: Asylum Interview Preparation Steps](#), July 2025.
- If you are representing someone in immigration court, review CILA's [Trauma-Informed Representation in Asylum Cases: Asylum Merits Hearing Preparation Steps](#), June 2025.
- Use CILA's [Asylum Case Theory and Evidence Matrix](#) and [Asylum, Withholding of Removal, and CAT Example Evidence Checklist](#) to help you stay organized and create a strategy. View CILA's webinar [Getting Your Case Together: Asylum, Affidavits & Exhibits](#) from CILA's 4th Annual Champions for Immigrant Youth Symposium to get tips for organizing your case, May 2022.
- Review the [IRAP Explainer on New Trump Administration Policies Impacting Refugees, Asylum Seekers, Afghan Nationals, and Immigrants from Countries Listed on the Travel Ban](#), December 2025.
- Review CGRS's Fact Sheet, [State Department Sabotages Country Reports on Human Rights Practices](#), October 2025.
- Read CILA's [Highlight on Resources & Services to Support Pro Bono Attorneys](#) to learn more about developing the record and organizations like Justice in Motion and Keep Families Together.
- Contact [CGRS](#) for access to their resources, helpful country conditions information, and expert documentation.
- Read USCIS's Refugee, Asylum and International Operations (RAIO) Directorate's training module: [RAIO Combined Training Program Children's Claims Training Module](#), December 2024.
- Explore Immigration Justice Campaign's training materials on [Asylum, Withholding, and CAT](#) to learn more about each step of the asylum process.
- Review National Immigrant Justice Center's (NIJC) [Basic Procedural Manual for Asylum Representation Affirmatively and In Removal Proceedings](#), July 2021.
- To hear from country conditions experts, watch CILA's [webinar A Deep Dive Into Current Conditions in El Salvador, Guatemala, & Honduras with the Experts](#) (1 hour, 54 minutes), August 2021 and CILA's [webinar Children's Asylum & Gang Related Crimes](#)(1 hour, 15 minutes), August 2024.
- Review CILA's [Conditions for LGBTQIA+ Children and Families](#), August 2022 and [Country Conditions Compilation: Conditions for Children & Youth in Five Countries with Criminal Group Violence](#), November 2024 to help with country conditions research.

- For more country conditions information on El Salvador, Guatemala, and Honduras, review Temple University Beasley School of Law and Washington Office on Latin America (WOLA)'s [Annotated Table of Contents](#), which includes resources on topics like state complicity and small business owners fleeing persecution. Additionally, visit Temple University Library's [Asylum Practicum—Country Conditions Research](#) for a helpful list of country condition sources.
- VECINA and the VIISTA Program at Villanova University provide [country conditions](#) information for several countries including Afghanistan, Cameroon, Colombia, Cuba, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Nicaragua, Peru, and Venezuela.
- Check out Immigration Equality and Midwest Immigrant and Human Rights Center's *Preparing LGBTQ and HIV Asylum, Withholding and CAT Claims (Asylum Manual)*. Read CLINIC and NIPNLG's *Options for Relief Under Asylum Law for LGBTQ Applicants*, October 2025.
- If your client was granted asylum, check out this information regarding benefits for asylees: USCIS webpage [Benefits and Responsibilities of Asylees](#) and [Family of Refugees and Asylees](#).
- If you are working with a client from Afghanistan, check out the ABA COI's webinars on *Asylum 101 for Representing Afghan Parolees*, January 2022, *Cultural Humility and Working with Afghan Clients*, February 2022, *Bars to Asylum and Common Concerns*, March 2022, and the *Anatomy of the Asylum Interview*, May 2022; or the *Practice Advisory: Common Obstacles when Representing Afghans in Immigration Proceedings* developed by the ABA COI, CLINIC, Conklin Immigration, and Clinical Programs of Trinity Law School, September 2023.

C. Withholding of Removal and Protection Under the Convention Against Torture

Withholding of removal and protection under the Convention Against Torture (CAT)¹⁵⁶ are similar to asylum since they are fear-based claims, and the applicant also uses the [Form I-589, Application for Asylum and for Withholding of Removal](#) to apply for the relief. For children's cases, guidance used in asylum cases to look at the case from the perspective of a child should also arguably apply to children's withholding of removal and CAT cases. [Section III.B.](#) includes resources for children's-based asylum cases. Like asylum, this is a dynamic area of law. It is important to check for legal updates. As the bars to asylum increase, pursuing withholding of removal or protection under the CAT may become more important. But the eligibility requirements and potential benefits significantly differ from asylum.

First, withholding of removal and protection under CAT are defensive claims meaning only an IJ can adjudicate these claims, not the asylum office. That said, it is often best practice to check the box on the front page of the Form I-589 to "apply for withholding of removal under the Convention Against Torture" to protect your client's options even when filing an affirmative asylum application with USCIS. If the asylum office denies the asylum application, the case will be referred to immigration court.¹⁵⁷ If this box was not checked or the I-589 does not properly address questions about torture, then you should consider submitting supplemental filings with the court to provide this information. Second, withholding of removal and protection under CAT are mandatory forms of relief. There is no discretion for the decision maker like there is in asylum; if the requirements are met, your client is eligible. Third, there is no pathway to lawful permanent residence and ultimately citizenship for withholding or protection under the CAT like there is for asylum. However, these forms of relief can be a critical protection for applicants otherwise barred from asylum. For instance, neither requires the applicant to file within one year of entry.¹⁵⁸ The information in this section will cover the differences and similarities between withholding of removal under the INA and protection under the CAT.¹⁵⁹

Third Country Removals

In 2025, the federal government sought to increase the use of "third country" removals, which refers to the practice of sending someone with a final removal order to a country other than their country of origin. This increased use threatened to undermine certain benefits of seeking withholding of removal as a respondent who received withholding could be sent to another country instead of being allowed to remain in the United States.¹⁶⁰ To learn more about third country removals and the 2025 litigation challenging the increased use, review this [practice advisory](#) (Jan. 29, 2025) and the practice alert *Third Country Deportations and D.V.D. v. DHS* (June 27, 2025) from NILA.

¹⁵⁶ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>.

¹⁵⁷ 8 C.F.R. § 208.14(c)(1). If your client is in removal proceedings and the IJ redetermines your client's unaccompanied child status (because they turned 18 or reunified with a parent before filing for asylum), then the judge may assert jurisdiction over the case. The judge may cite to *Matter of M-A-C-O-*, 27 I&N Dec. 477 (BIA 2018). Please review the section on "Where Should I File the Asylum Application?" for more information.

¹⁵⁸ While the one-year filing deadline is not applicable to unaccompanied children, this becomes important if a youth's unaccompanied child status is redetermined by an immigration judge. See [Section III.B.](#) for more information in the discussion of "Where Should I File the Asylum Application?"

¹⁵⁹ To learn more about the different protections under CAT, review ILC's *Qualifying for Protection Under the Convention Against Torture* (Nov. 2023).

¹⁶⁰ The February 2025 version of USCIS's "Affirmative Asylum Procedures Manual" takes the position that "A grant of withholding or deferral of removal is not considered relief since the individual still has a removal order that may be executed by removal to a third country."

Comparing the Bars of Asylum, Withholding of Removal Under the INA, Withholding of Removal Under the CAT, and Deferral of Removal Under the CAT

As the below chart illustrates, there are more bars to asylum than there are to withholding of removal, which sometimes leaves this form of relief as the only potential option.

BAR	ASYLUM	WITHHOLDING OF REMOVAL UNDER INA	WITHHOLDING OF REMOVAL UNDER CAT	DEFERRAL OF REMOVAL UNDER CAT
One Year filing deadline	X			
Firm resettlement	X			
Prior denial of an asylum application by EOIR	X			
Safe Third Country	X			
Persecutor of others	X	X	X	
Terrorism	X	X	X	
Nazi persecution or genocide	X	X	X	
Convicted of a particularly serious crime ^{161*}	X	X	X	
Commission of serious non-political crime outside the United States	X	X	X	
Danger to the security of the United States	X	X	X	

¹⁶¹ “Particularly serious crime” is more stringently defined in the asylum context (*see* INA § 208(b)(2)(B)(i); 8 U.S.C. § 1158(b)(2)(B)(i)) than in the context of withholding of removal (*see* INA § 241(b)(3); 8 U.S.C. § 1231(b)(3)(B)).

Withholding of Removal Under the INA

APPLYING FOR RELIEF

According to 8 C.F.R. § 1208.3(b), “[a]n asylum application shall be deemed to constitute at the same time an application for withholding of removal.” Therefore, when an I-589 application is filed, a withholding of removal claim will also be considered for a decision.

ELIGIBILITY REQUIREMENTS

Like with asylum, you must be able to show past persecution or a well-founded fear of future persecution with a connection/nexus to one of the five protected grounds: race, religion, political opinion, nationality, or PSG. Generally, the protected ground must be “one central reason” for the persecution—the same standard applies in asylum,¹⁶² except in the Ninth and Sixth Circuits, where the standard lessens to “a reason.”¹⁶³ If you are able to prove past persecution, the burden shifts to the government to rebut that presumption. The burden of proof for the possibility of future persecution is higher for withholding of removal than asylum. In withholding of removal, there must be a clear probability, or that it is more likely than not, that your client will suffer future persecution.

Withholding of Removal under the INA Key Sources of Law

- [Article 33 of the 1951 Convention on the Status of Refugees](#)
- [INA § 241\(b\)\(3\); 8 U.S.C. § 1231\(b\)\(3\)](#)
- [8 C.F.R. § 208.16](#)

BENEFITS OF AN APPROVED CLAIM FOR WITHHOLDING OF REMOVAL UNDER THE INA

If granted, a removal order will simultaneously be issued and withheld, meaning that your client will not be deported. This approval will not lead to permanent residence and citizenship, but the individual will be able to apply for an employment authorization document (EAD). This claim is country-specific so if there is more than one potential country of removal, then you must prove withholding for each country. Additionally, there is no option to include derivatives in an application for withholding, so each individual whom an applicant includes in their asylum application must have their own application for withholding. Unlike asylum, there is no option to bring family to the United States after a grant on this basis.¹⁶⁴ There is no right to travel and reenter the United States. Although withholding of removal has limited benefits, it does provide your client with protection and ability to stay in the United States, which can be very important when your client is facing severe injury and/or death upon return to their country of origin.

TIP: Recent policy changes have led to concerns about noncitizens being deported to countries that were never previously raised as possible countries of removal without any notice or opportunity to contest removal based on a fear of persecution or torture. These policies have been challenged in litigation.¹⁶⁵ For more information, review the National Immigration Litigation Alliance’s (NILA) practice alert, templates, and related resources for third-country deportations available on their [website](#).¹⁶⁶ As of publication, the

¹⁶² *Matter of C-T-L-*, 25 I&N Dec. 341 (BIA 2010).

¹⁶³ *Barajas-Romero v. Lynch*, 846 F.3d 351, 358 (9th Cir. 2017); *Turcios-Flores v. Garland*, 67 F.4th 347, 358 (6th Cir. 2023).

¹⁶⁴ However, learn more about the Central American Minors (CAM) refugee and parole program in [Section III.A](#).

¹⁶⁵ See the discussion of the *D.V.D. v. DHS* case in “NILA’s Affirmative Litigation Docket,” available at <https://immigrationlitigation.org/impact-litigation/> (last visited Oct. 7, 2025).

¹⁶⁶ See also *Updates on Third Country Removals and the D.V.D. Litigation*, CLINIC (June 26, 2025), <https://www.cliniclegal.org/resources/removal-proceedings/updates-third-country-removals-and-dvd-litigation>.

ability for the government to remove someone to a third-country has greatly diminished the potential benefits from this form of relief.¹⁶⁷

Protection Under the Convention Against Torture

The United States is a party to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), signing the CAT in 1988, ratifying it in 1994, and codifying it into U.S. law in 1998. Article 3 of the CAT includes a non-refoulement provision, “[n]o State Party shall expel, return (‘refouler’) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.”¹⁶⁸

There are two related claims for relief: withholding of removal and deferral of removal under the CAT. Withholding of removal is a more secure form of relief than deferral of removal. But you must not be barred from withholding of removal under the INA to be eligible for this form of removal. For those who are barred, deferral of removal may be necessary. Review the chart above for more about how the bars for each type of claim can differ.

Protection under the Convention Against Torture Key Sources of Law

Withholding of Removal under the CAT:

- [Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#)
- [8 C.F.R. § 208.16](#)
- [8 C.F.R. § 208.18](#)

Deferral of Removal under the CAT:

- [8 C.F.R. § 208.17](#)
- [8 C.F.R. § 241.4\(b\)\(3\)](#)

APPLYING FOR RELIEF

To apply for withholding or deferral of removal under the CAT, check the box on the front page of the [Form I-589](#).

ELIGIBILITY REQUIREMENTS

An important distinction between CAT cases and asylum is that in CAT cases, there is no requirement to connect the harm to one of the five protected grounds (nexus). In a successful CAT claim, you must prove it is more likely than not that your client will face torture.¹⁶⁹ This standard will not be met if the circumstances giving rise to torture are speculative or generalized. Rather, you must address each link in the chain of events that would lead to torture with facts and evidence that each link is more likely than not. Torture is defined as severe pain or suffering that is either physical or mental.¹⁷⁰ The BIA has defined torture as “an extreme form of cruel and inhuman treatment” and not lesser forms.¹⁷¹ Harm should be considered in the aggregate so all forms of harm your client fears should be raised and argued.

¹⁶⁷ *Trump Administration’s Third Country Removals Put Migrants in Harm’s Way*, International Refugee Assistance Project (IRAP), <https://refugeerights.org/news-resources/trump-administrations-third-country-removals-put-migrants-in-harms-way> (last visited Oct. 7, 2025).

¹⁶⁸ See CAT, Dec. 10, 1984, 1465 U.N.T.S. 85, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>.

¹⁶⁹ In the Seventh Circuit, they consider more likely than not in terms of “a substantial risk” rather than in the quantitative sense reflecting the language of the Convention itself rather than the regulations. See *Arrazabal v. Lynch*, 822 F.3d 961 (7th Cir. 2016).

¹⁷⁰ See *supra* note 156. See also 8 C.F.R. § 208.18(a).

¹⁷¹ *Matter of J-E-*, 23 I&N Dec. 291 (BIA 2002). The BIA issued a series of decisions in 2025 that limited the definition of torture, especially in the context of someone who fears imprisonment. See CLINIC’s “[BIA Limits Protection Under the Convention Against Torture](#)” (summarizing the holdings of *Matter of S-S-*, 29 I&N Dec. 136 (BIA 2025); *Matter of A-A-F-V-*, 29 I&N Dec. 118 (BIA 2025); *Matter of E-Z-*, 29 I&N Dec. 123 (BIA 2025)).

According to 8 C.F.R. § 208.18(a)(1):

Torture is defined as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or her or a third person information or a confession, punishing him or her for an act he or she or a third person has committed or is suspected of having committed, or intimidating or coercing him or her or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

Looking closer at the definition and other aspects of “torture” in the regulations, the requirements include:

- **What?** An act—severe pain or suffering—that is either physical or mental
 - NOT Arising out of a lawful sanction¹⁷²
- **Intent?** That is intentionally inflicted
- **Why/Purpose?** For such purposes as listed above (i.e., “obtaining from him or her or a third person information or a confession,” etc.) or something similar
- **By Whom?** The act was done by OR at the instigation of OR with the consent or acquiescence of a public official or other person acting in an official capacity
 - ALSO Some jurisdictions require a finding that the act was against a person in the offender’s custody or physical control¹⁷³

Looking at the *by whom?* question a little closer, it is important to know that the actor can be either a government actor or a non-governmental actor, but there must be some involvement by the government. This could be any type of public official—low or high level, local, state or federal public official, etc.

Generally, “acquiescence of a public official” is more difficult to prove than the standard seen in asylum—unable or unwilling to protect.¹⁷⁴ The regulations require: the official “must prior to the activity constituting torture, have awareness of such activity and thereafter breach his legal responsibility to intervene to prevent such activity.”¹⁷⁵ Awareness includes actual knowledge and willful blindness.¹⁷⁶ It depends on case law and which Circuit Court of Appeals you are in to see how this is assessed.

The case *Matter of O-F-A-S-* looked at the issue of when a person is “acting in an official capacity” and found that cases should be analyzed by whether the person was acting “under the color of law” as seen in cases under the Civil Rights Act.¹⁷⁷ This is a fact-intensive inquiry and both direct and circumstantial evidence should be considered when determining if the individual was “acting in an official capacity.”

172 For instance, the death penalty is a lawful sanction; therefore, this is not considered torture. However, under 8 C.F.R. § 208.18(a)(3), “a government cannot exempt itself from obligations under the CAT by defining acts that would constitute torture as lawful forms of punishment.” Case law research will be important in cases with this issue.

173 Having custody or control is a requirement included in the regulations but not in the CAT itself. See 8 C.F.R. § 208.18(a)(6). The Ninth Circuit has reversed denials of CAT on this basis and recognized that “[t]orture is not limited to acts that occur ‘under public officials’ custody or physical control.” *Reyes-Reyes v. Ashcroft*, 384 F.3d 782, 788 (9th Cir. 2004) (citing *Azanor v. Ashcroft*, 364 F.3d 1013, 1019–20 (9th Cir. 2004)).

174 *Matter of M-S-I-*, 29 I&N Dec. 61 (BIA 2025) (explaining the different standards).

175 8 C.F.R. § 208.18(a)(7).

176 The BIA case *Matter of S-V-* required “willful acceptance” to meet acquiescence but this has been largely rejected by Circuit Courts of Appeals, which instead condone the “willful blindness” standard. 22 I&N Dec. 1306 (BIA 2000).

177 *Matter of O-F-A-S-* states “[t]he ‘under color of law’ standard draws no categorical distinction between the acts of low- and high-level officials. A public official, regardless of rank, acts ‘under color of law’ when he ‘exercise[s] power ‘possessed by virtue of . . . law and made possible only because [he was] clothed with the authority of . . . law.’” *Matter of O-F-A-S-*, 28 I&N Dec. 35 (A.G. 2020). The BIA elaborated on this in *Matter of J-G-R-* stating that, “[t]he key consideration in determining if an official’s torturous conduct was undertaken ‘in an official capacity’ for purposes of CAT eligibility is whether the official was able to engage in the conduct because of his or her government position, or whether the official could have done so without connection to the government.” 28 I&N Dec. 733 (BIA 2023).

BUILDING THE CASE

According to the regulations, the burden of proof is on the applicant and all evidence relevant to the possibility of future torture shall be considered.¹⁷⁸ “The testimony of the applicant, if credible, may be sufficient to sustain the burden of proof without corroboration.”¹⁷⁹

The regulations under 8 C.F.R. § 208.16(c) also provide a non-exhaustive list of evidence to consider, none of which are individually determinative, including evidence of:

- Past torture
- That the applicant could relocate to another part of the country and not be tortured
- Gross, flagrant, or mass violations of human rights within the country of removal
- Relevant information regarding country conditions

Therefore, it is important to consider all potential evidence that could show your client will more likely than not be tortured in the potential country of removal. Usually, generalized country conditions evidence alone is insufficient to meet an applicant’s burden of demonstrating the individualized risk of torture necessary to win a CAT claim.¹⁸⁰ Expert testimony can be instrumental in establishing the future risk an individual faces based on the case facts and context within their country of origin.

CONSIDER WHEN PREPARING A CASE

- Does the I-589 application include the necessary information regarding the torture your client fears?
- Are you asking your client the pertinent questions when drafting the declaration to support a CAT case?
- Does your documentary evidence help prove each element of a CAT case?
 - Evidence of any past harm, torture, threats done to your client and/or family members
 - Statements from community members, neighbors, family, etc.
 - Documentary support showing related human rights abuses by the government of their country?
 - Torture committed by government officials? Evidence of corruption? Impunity? Inadequate response by the government in relation to the harm that is feared?
 - Country conditions expert statement to help make a connection between the general country conditions evidence to your client
- Are you asking your client and/or witness(es) the pertinent questions in testimony that relate to a CAT claim?

¹⁷⁸ 8 C.F.R. § 208.16(c).

¹⁷⁹ *Id.*

¹⁸⁰ See *Pieschacon-Villegas v. Att’y Gen.*, 671 F.3d 303, 312–13 (3d Cir. 2011), *abrogated on other grounds by Nasrallah v. Barr*, 140 S. Ct. 1683 (2020); *Lin v. U.S. Dep’t of Justice*, 432 F.3d 156, 160 (2d Cir. 2005).

MAKING THE ARGUMENT THAT AGE MATTERS IN CAT CASES

- You can look to international guidance to make the argument that age matters in CAT cases. The U.N. Committee Against Torture interprets and monitors the CAT. General Comments Nos. 2¹⁸¹ and 4¹⁸² have helpful language to make the argument that age matters. If gender is an important factor in your case, the General Comments also provide helpful language regarding this issue.
- For example, you could make the argument that similar to asylum, where a lesser harm experienced by a child could be considered persecution comparatively to an adult, argue that a lesser act should be considered torture for a child, even if it would not for an adult.
- Keep in mind that torture can be either physical or mental severe pain or suffering. Under 8 C.F.R. § 208.18(a)(4), torture for mental pain or suffering includes, among other things, a threat of imminent death or a threat that another person will be subject to death, severe physical pain or suffering. Again, you may want to make an analogous argument using guidance from asylum cases. In asylum cases, there is support that a child, because of age, will react differently than an adult when a caregiver or close family member suffers harm.¹⁸³ Also, remember to argue and show by any available documentary evidence any ongoing or lasting psychological impact.

Check out CILA's resources listed below to help you further strategize and support your case with documentary evidence.

Withholding of Removal & Deferral of Removal Under the CAT

The requirements for withholding of removal under the CAT and deferral of removal under the CAT are the same.¹⁸⁴ As the the chart [Comparing the Bars of Asylum, Withholding of Removal Under the INA, Withholding of Removal Under the CAT, and Deferral of Removal Under the CAT](#) illustrates, there are no bars to relief for deferral of removal; whereas, there are bars for withholding of removal under the CAT.¹⁸⁵

BENEFITS OF AN APPROVED CLAIM FOR WITHHOLDING OF REMOVAL UNDER THE CAT

The benefits and limitations for withholding of removal under the CAT are the same as they are for withholding of removal under the INA.

181 General Comment No. 2 states:

The protection of certain minority or marginalized individuals or populations especially at risk of torture is a part of the obligation to prevent torture or ill-treatment. States parties must ensure that, insofar as the obligations arising under the Convention are concerned, their laws are in practice applied to all persons, regardless of race, colour, ethnicity, age, religious belief or affiliation, political or other opinion, national or social origin, gender, sexual orientation, transgender identity, mental or other disability, health status, economic or indigenous status

U.N. Committee against Torture, *General Comment No. 2 on implementation of article 2 by States parties*, CAT/C/GC/2 (Jan. 24, 2008), https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=1&DocTypeID=11.

182 General Comment No. 4 states:

Severe pain or suffering cannot always be assessed objectively. It depends on the negative physical and/or mental repercussions that the infliction of violent or abusive acts has on each individual, taking into account all relevant circumstances of each case, including the nature of the treatment, the sex, age, and state of health and vulnerability of the victim and any other status or factors.

U.N. Committee against Torture, *General Comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22*, CAT/C/GC/4 (Sept. 4, 2018), https://www.ohchr.org/Documents/HRBodies/CAT/CAT-C-GC-4_EN.pdf.

183 See the Asylum section for further discussion of *Experiencing Harm as Child*.

184 8 C.F.R. § 208.17(a).

185 *Id.*; 8 C.F.R. § 208.16(d).

BENEFITS OF AN APPROVED CLAIM FOR DEFERRAL OF REMOVAL UNDER THE CAT

Similar to withholding of removal under the INA and withholding of removal under the CAT, if deferral of removal is granted, a removal order will be issued.¹⁸⁶ Simultaneous with the grant, the removal order will be deferred. This approval will not lead to permanent residence and citizenship. The individual can apply for an EAD, but it will not be automatically granted. Discretionary factors such as good moral character, positive contributions, ties to the United States, economic necessity, dependent family members, etc. are considered when making a decision on the EAD. Deferral of removal can be terminated by a motion from the government or if the Secretary of State receives diplomatic assurances.¹⁸⁷ Additionally, an individual is not exempt from detention despite an approval on this basis.

Similar to withholding of removal under the INA and withholding of removal under the CAT, a claim for deferral of removal is country-specific so if there is more than one potential country of removal, then you must prove deferral of removal for each country. There is no option to have derivatives so each individual must have their own application for deferral of removal, and there is no option to bring family after receiving an approval on this basis. There is no right to travel and reenter the United States.

Therefore, deferral of removal under CAT is a more precarious and limited form of relief than withholding of removal under the INA and withholding of removal under the CAT, but it can be an important option for protection for your client if there are barriers to alternative forms of relief.

Links to Help You with YOUR CLIENT'S WITHHOLDING OF REMOVAL OR CAT CASE

- Review the practice advisory provided by NILA, the Northwest Immigrant Rights Project (NWIRP), and Human Rights First, *Practice Alert: Third Country Deportations and D.V.D. v. DHS*, June 2025.
- Check out CILA's [webinar: Overview of Withholding of Removal and Protection under the Convention Against Torture for Unaccompanied Children](#) (60 minutes), January 2020.
- Check out Immigration Equality and Midwest Immigrant and Human Rights Center's *Preparing LGBTQ and HIV Asylum, Withholding and CAT Claims Manual (Asylum Manual)*.
- Take a look at ILRC's practice advisory *Qualifying for Protection Under the Convention Against Torture*, Aruna Sury, November 2023.

¹⁸⁶ 8 C.F.R. § 208.17.

¹⁸⁷ 8 C.F.R. § 208.17(d).

D. Special Immigrant Juvenile Status (SIJS) and Adjustment of Status (AOS)

Special immigrant juvenile status (SIJS) is a form of humanitarian protection available for youth up to age 21 who need intervention from a state court because of abuse, neglect, or abandonment by a parent. The question of whether the youth has been abused, neglected, or abandoned (or a similar basis under state law) must be determined by a state court with jurisdiction over the care and custody of children.

There are three key phases of a SIJS case: (1) obtaining a custody or dependency order from a state court, (2) submitting the special immigrant juvenile petition for a decision from USCIS, and (3) applying for lawful permanent residence (either with USCIS or the immigration judge).

TIP: Keep in mind that you will likely need to be barred in the state where the state court order is obtained, although you can be barred in any state to petition with USCIS or appear in immigration court.

THREE PHASES OF A SIJS CASE



SIJS Eligibility Requirements: The applicant must:¹⁸⁸

- Be under 21 on the date of filing Form I-360, *Petition for Amerasian, Widow(er), or Special Immigrant*;¹⁸⁹
- Be physically present in the United States through adjudication of SIJS;
- Be unmarried through the adjudication of the SIJS petition;
- Have a valid state court order with certain determinations;
- Have USCIS consent to the grant of SIJS;
- And, if in ORR custody, may also require specific consent from the Secretary of HHS.

TIP: If you want to learn more about the eligibility requirements, CILA developed the resource, [Overview of New Special Immigrant Juvenile Status Regulations](#), that discusses the regulation changes in 2022 and provides historical context for the SIJS statutes and regulations.

¹⁸⁸ INA § 101(a)(27)(J); 8 U.S.C. § 1101(a)(27)(J); 8 C.F.R. § 204.11.

¹⁸⁹ Note that a youth will self-petition for Special Immigrant Juvenile Status (SIJS) when filing Form I-360.

Special Immigrant Juvenile Status and Adjustment of Status Key Sources of Law

- INA § 101(a)(27)(J); 8 U.S.C. § 1101(a)(27)(J)
- 8 C.F.R. § 204.11
- USCIS Policy Manual Volume 6 Immigrants - [Part J Special Immigrant Juveniles](#)
- [USCIS Administrative Appeals Office \(AAO\) Decisions](#)
- INA § 245(h); 8 U.S.C. § 1255(h) (adjustment of status)
- 8 C.F.R. § 245.1(e)(3) (adjustment of status)
- [USCIS Policy Manual Volume 7 Adjustment of Status - Part A - Adjustment of Status Policies and Procedures and Part F Special Immigrant-Based \(EB-4\) Adjustment - Chapter 7 Special Immigrant Juveniles](#) (adjustment of status)
- William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008; 8 U.S.C. § 1232

***** State law also impacts SIJS eligibility, often in the areas of child welfare, family law, and juvenile justice law, so this will vary per jurisdiction. This will require research and preparation outside the scope of this Guide, as the Guide focuses on issues that are nationally applicable.*****

Phase 1: State Law Portion: Obtain State Court Order

For USCIS to grant SIJS, there are five requirements for the state court order. The order must:¹⁹⁰

1. Be valid;
2. Contain a judicial determination about custody or dependency;
3. Include a determination about parental reunification;
4. Contain a best interest determination; and
5. Warrant DHS consent by providing the factual basis for the determinations made under state law, either in the court order or other documents submitted to the court. DHS when making this assessment will consider if the order contains a “bona fide” request, meaning whether a primary reason for seeking the determinations in state court was to obtain relief from parental abuse, abandonment, neglect, or a similar basis under state law.

¹⁹⁰ INA § 101(a)(27)(J); 8 U.S.C. § 1101(a)(27)(J); 8 C.F.R. § 204.11.

VALID COURT ORDER

In order for a court order to be valid, it must be issued under state law.¹⁹¹ Determinations in the state court order should be based on state law.¹⁹²

TIP: Therefore, arguments in pleadings should only be based on state law, not immigration law.

Additionally, the state court must have continuing jurisdiction during the filing through adjudication of the SIJS petition by USCIS.¹⁹³ There are exceptions to this rule. For instance, if a SIJ petitioner is adopted or placed in a permanent guardianship or if a petitioner was subject to a valid order that was later terminated based on age before or after filing the SIJS petition (as long as they were under age 21 when filing the SIJS petition).¹⁹⁴ If a petitioner relocates, USCIS may not require a new state court order unless the petitioner is no longer living in their court ordered placement (e.g., if the state court granted dad custody, but then the youth moved to live with a cousin, then the youth is no longer living with their court ordered placement). In that case, a new court order may be necessary or evidence must be provided to show continuing jurisdiction.¹⁹⁵



JUDICIAL DETERMINATION ABOUT CUSTODY OR DEPENDENCY

The state court order must include a determination about either custody or dependency.¹⁹⁶ There must be a state law basis for the custody or dependency determination.¹⁹⁷ The state court order should generally not be temporary or expire before the child reaches the age of majority.¹⁹⁸ Every state's laws regarding custody and dependency are different. Identify the laws that apply in the state where you are obtaining a state court order. Some states have statutes that are specific to SIJS.¹⁹⁹

Keep in mind:

- **Custody:**
 - The state court order must include both legal and physical custody.
 - If custody is granted to an individual, the name of that individual should be included.
- **Dependency:**
 - The state court order must declare dependency OR legal commitment/placement under the custody of a state agency, department, entity, or individual.
 - Dependency "generally involves a determination regarding the care and custody of the child or the provision of child welfare services or both."²⁰⁰ Dependency must also include intervention by the state court to provide child welfare services, and/or to provide court-ordered or court-recognized protective or remedial relief.²⁰¹ Child welfare services could include psychiatric, psychological, educational, occupational, medical or social services, protection against domestic violence or human trafficking, or other supervision by a court or a court-appointed entity.

191 USCIS Policy Manual Vol. 6, Pt. J, Ch. 2.C.

192 Keep in mind that state laws differ, and some states will consider youth under 18 for a state court order while other states will consider youth under age 21. See page 82 for more information about seeking SIJS when your client is over 18 years old.

193 USCIS Policy Manual Vol. 6, Pt. J, Ch. 2.A. 2.C.4.

194 *Id.*

195 *Id.*

196 USCIS Policy Manual Vol. 6, Pt. J, Ch. 2.C.1.

197 When you submit the I-360 packet to USCIS, the state law basis for the custody or dependency determination can be shown by either the order or in the evidence submitted to obtain the state court order. See USCIS Policy Manual Vol. 6, Pt. J, Ch. 3.A.1.

198 USCIS Policy Manual Vol. 6, Pt. J, Ch. 2.C.

199 See *Summary of State Special Immigrant Juvenile Status (SIJS) Legislation*, CILA (Mar. 31, 2025), <https://cilacademy.org/resource-file/summary-of-state-special-immigrant-juvenile-status-sijs-legislation/>.

200 USCIS Policy Manual Vol. 6, Pt. J, Ch. 2.C.1., fn. 13. It is not required that a child become a ward of the state to be eligible for SIJS.

201 8 C.F.R. § 204.11(d)(5); USCIS Policy Manual Vol. 6, Pt. J, Ch. 3.A.1., 2.

JUDICIAL DETERMINATION ABOUT PARENTAL REUNIFICATION

The judge must also determine that reunification with a parent is not possible.²⁰² This should be based on a determination of abuse, neglect, or abandonment (or a similar basis under state law) by that parent. Reunification cannot be possible until the child ages out of the court's jurisdiction. Termination of the parent's rights is not required.²⁰³

The USCIS Policy Manual provides information regarding determining parentage and states that the record must establish that the court made a determination regarding the petitioner's parentage and that USCIS may request additional evidence if this determination is missing. This requirement can be met through naming the parents or explaining that they are unknown in the order, or through other supporting evidence in the record such as a birth certificate.²⁰⁴

JUDICIAL DETERMINATION ABOUT BEST INTEREST

The best interest of a child is regularly considered in custody or dependency proceedings, but the best interest finding here is a little different. Here, the emphasis is on best interest of the child regarding *placement* specifically. There must be a judicial determination that it is not in the best interest of the child to be returned to the country of nationality or last habitual residence of the petitioner or their parents.²⁰⁵ The argument does not typically focus on country conditions (like an asylum claim). Instead, arguments generally focus on showing the judge that it is not in the youth's best interest to return to their previous placement in their home country, no one else is available, willing, or able to care for them there, and that it is in their best interest to remain in their current placement. This typically fits within the traditional best interest analysis done by the judge in child welfare and custody proceedings. According to the USCIS Policy Manual, "USCIS generally defers to the court on matters of state law and does not go behind the juvenile court order to reweigh evidence and make independent determinations about the best interest of the juvenile and abuse, neglect, abandonment, or a similar basis under state law."²⁰⁶

202 INA § 101(a)(27)(J); 8 U.S.C. § 1101(a)(27)(J).

203 USCIS Policy Manual, Vol. 6, Pt. J, Ch. 2.C.2.

204 *Id.*

205 INA § 101(a)(27)(J); 8 U.S.C. § 1101(a)(27)(J); 8 C.F.R. § 204.11(c)(6).

206 USCIS Policy Manual, Vol. 6, Pt. J, Ch. 2. Moreover, the USCIS Policy Manual goes on to say, if for example, "the court places the child with a person in the United States under state law governing the juvenile court dependency or custody proceedings, and the order includes facts reflecting that the caregiver has provided a loving home, bonded with the child, and is the best person available to provide for the child, this would likely constitute a sufficient basis in support of a qualifying best interest determination to warrant DHS consent. The analysis would not change even if the chosen caregiver is a parent." USCIS Policy Manual, Vol. 6, Pt. J, Ch. 2.C.3.

WARRANT DHS CONSENT

The Secretary of DHS must consent to the grant of SIJS.²⁰⁷ This involves a question of whether the state court order was bona fide and sought to protect the child from abuse, abandonment, or neglect and was not solely for an immigration benefit.²⁰⁸ To meet this requirement, the order should state the factual basis for the legal determinations made under state law. If the order does not provide a factual basis, when you submit the petition packet to USCIS, this can be evidenced by other state court documents such as the petition, evidence submitted, court transcript or if not available, an affidavit by the attorney or client summarizing what was submitted to the court.²⁰⁹

State Practice Manuals

CILA is partnering with organizations across the nation to develop practice manuals with detailed state-specific information on how to obtain an order with SIJS determinations.

- **Maryland:** CILA & KIND, *SIJS Manual for Maryland Practitioners* (2025)
- **New Jersey:** CILA & KIND, *SIJS Manual for New Jersey Practitioners* (2025)
- **Virginia:** CILA & Ayuda, *SIJS Manual for Virginia Practitioners* (2024)
- **New York:** CILA & The Door, *SIJS Manual for New York Practitioners* (2024)
- **Florida:** CILA & Orlando Center for Justice, *SIJS Manual for Florida Practitioners* (2023)
- **Texas:** CILA, *SIJS Manual for Texas Practitioners* (2023)

More resources on additional states are in development. Check CILA's [website](#) to see if other states have been added. ILRC created a resource on orders in [California](#), NIJC developed materials for pro bono attorneys preparing SIJS cases in [Illinois](#), and KIND worked with the Washington State Task Force on Unaccompanied Children to develop a SIJS bench book and resource guide related to cases in [Washington](#).

207 INA § 101(a)(27)(J); 8 U.S.C. § 1101(a)(27)(J). In March 2021, USCIS updated the USCIS Policy Manual based on a settlement agreement from *Saravia v. Barr*, 3:17-cv-03615 (N.D. Cal. January 14, 2021), that impacts “the application of the USCIS consent function as well as the grounds upon which the agency may revoke an SIJS petition.” USCIS, *Policy Alert: Special Immigrant Juvenile Classification and Saravia v. Barr Settlement*, PA-2021-03 (Mar. 18, 2021), <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20210318-SIJ.pdf>. Accordingly, USCIS “will not refuse its consent to a request for SIJ classification based in whole or in part on the fact that the state court did not consider or sufficiently consider evidence of the petitioner’s gang affiliation when deciding whether to issue a predicate order or in making its determination that it was not in the best interest of the child to return to his or her home country.” *Id.* See also USCIS Policy Manual Vol. 6, Pt. J, Ch. 2.D.

208 USCIS Policy Manual, Vol. 6, Pt. J, Ch. 2.D.

209 USCIS Policy Manual, Vol. 6, Pt. J, Ch. 3.A.2.

TIPS TO OBTAIN THE STATE COURT ORDER

Be familiar with your state's laws regarding custody and dependency. Talk to family, child welfare, or juvenile law practitioners. Review state-specific resources, such as CILA's resources included above in the call-out box on "[State Practice Manuals](#)."

Draft your documents in the form locally accepted in the court you will enter.

Include references to state law, not immigration law.

It may help to have a "findings" section in the order to ensure there is a place to include determinations regarding parental reunification and best interest, and the factual basis for these determinations.

Learn about/initiate service of process. You will need to serve the respondents in the case, typically the parents of the child, and possibly other individuals. Oftentimes, one or both of the parents will be living abroad. This may present unique challenges that should be navigated using the rules of service in your state and any applicable international treaties.²¹⁰

Gather evidence to show the judge that there was abuse, neglect, and/or abandonment by one (or both) of the child's parents. Evidence could include medical records, school records, an affidavit by the child, and direct testimony and/or affidavits from the petitioner in the state court action or others who know about the harm the child suffered.

Research the issues and consult available resources on SIJS to double-check that you have everything you need to move forward to obtain the state court order. Read the USCIS Policy Manual on SIJS before going to state court (not after!).

Prepare yourself and your client for a hearing in state court to obtain a final order. Your client may need an interpreter during the hearing. Consult the court's practice and rules for how to request a court-provided interpreter or to see if you need to bring your own.

Request a court reporter so you can obtain a court transcript of the hearing. After the hearing, obtain a certified copy of the final order to submit to USCIS.

²¹⁰ For example, you may need to consider the Hague Service Convention or Inter-American Convention on Letters Rogatory. A helpful starting point for research is the DOJ website. See *Service Requests*, DOJ, <https://www.justice.gov/civil/service-requests> (last updated Jan. 16, 2026). If you are practicing in Texas, you may want to consult Burta Rhoads Raborn (RBB) Inns of Court Team 4's decision tree on *How to Serve the Respondent Successfully*.

Common Issues

DEATH AS ABANDONMENT OR NEGLECT

The [USCIS Policy Manual](#) Vol. 6, Pt. J, Ch. 3 states: “The fact that one or both parents is deceased is not itself a similar basis to abuse, neglect, or abandonment under state law. A legal conclusion from the state court is required to establish that parental death constitutes abuse, neglect, abandonment, or is legally equivalent to a similar basis under state law.” First, look to your state law regarding whether death is a similar basis or sufficient to show abuse, neglect, or abandonment under state law. Even if there is no similar basis under your state law, it is sometimes viable to argue that the death of a parent results in constructive abandonment or neglect because the parent failed to plan for that scenario and the child was left without provision or care, if the parent did not have a will or sufficient resources. It is important to tie this to neglect and/or abandonment as defined in your state’s law. Alternatively, where death does not constitute abandonment or neglect, another potential strategy is to claim and show evidence of any abuse, abandonment, or neglect that occurred before the parent’s death, and to show that any reunification is not viable due to the past harm.

These Administrative Appeals Office (AAO) non-precedential decisions provide examples under various state laws:

- [In Re: 35718631](#) (AAO Jan. 8, 2025) (Texas) (state court found that the parents’ “failed to make necessary arrangements for her care after their deaths as required by Texas Family Code section 261.001(4), which defines ‘neglect’ as ‘an act or failure to act by a person responsible for a child’s care, custody, or welfare’”)
- [Matter of Y-A-M-O](#) (AAO Feb. 28, 2019) (Texas) (failure to make reasonable and necessary arrangements for the child after death met the definition of abandonment under Texas Family Code § 152.102.)
- [In Re: 32405442](#) (AAO May 10, 2024) (Rhode Island) (state court order did not provide a state law citation to show how death of a parent is similar to abuse, neglect, abandonment, or a similar basis under Rhode Island law as required and has not demonstrated eligibility for SIJS.)
- [In Re: 18431575](#) (AAO Sept. 14, 2022) (New York) (death of a parent prevented reunification under *Matter of Luis R. v. Maria Elena G.* 120 A.D.3.d 581 (N.Y. App. Div. 214) and New York statutes.)
- [In Re: 17813928](#) (AAO Aug. 26, 2022) (Michigan) (“While we acknowledge that the death certificates provided a reasonable factual basis for the court’s findings that reunification with the Petitioner’s parents was not viable, the evidence in the record does not establish that the court determined the death of a parent is a similar basis under Michigan State law to that of abuse, neglect, or abandonment.”)
- [In Re: 14451884](#) (AAO May 11, 2022) (Colorado) (state court order did not make sufficient reunification findings because it did not cite a specific statute to support the statement that “parental death constitutes abandonment or the equivalent thereof.”)

YOUTH OVER 18 YEARS OLD

Youth have until their 21st birthday to file the I-360 petition with USCIS.²¹¹ But there may be limited options to obtain a state court order once youth reach the age of majority, which in most states is 18 years old. Some states such as California, Illinois, New Mexico, and Washington have enacted legislation to address this issue of post-18 relief and provide a pathway for youth to obtain SIJS determinations in state court after they turn 18.²¹² If your client is at risk of aging out of the state court system, you should research applicable state laws and be aware that you may need to try and expedite proceedings in state court. For clients who are nearing their 21st birthday, the [USCIS website](#) has information for how to file Form I-360 in person at a USCIS field office if seeking to file within 2 weeks of the client turning 21. Additionally, advocates should consider other concerns that arise for older youth in removal proceedings who are close to aging out including potential detention by ICE and enforcement action.²¹³

PARENTAGE

The establishment of parentage can be complex, especially when you are looking at the laws of the country where a child was born. Oftentimes, parents in your case may not be married or otherwise subject to presumptions of parentage under the laws of your state. Additionally, some clients may have other relatives on their birth certificate in the absence of a father. Be sure to review the child's birth certificate for both a mother and father and ask the child and/or adult caregiver(s) about any other individuals that could be considered possible fathers (and in some cases mothers) under state law even if not listed on the child's birth certificate. USCIS notes that if the parent who has mistreated the child is not on the child's birth certificate, they will look to the state court order for a determination of parentage of the abusive or neglectful person. If the identity of the father is unknown, you may be able to make findings against an unknown father.²¹⁴

²¹¹ See 8 C.F.R. § 204.11(b).

²¹² Review CILA's resource, *Summary of State Special Immigrant Juvenile Status (SIJS) Legislation*, to learn about states that have introduced SIJS specific legislation. Learn more in the links provided regarding the specific laws.

²¹³ See *Quick Guide: Defending SIJS Clients in Removal Proceedings*, CILA, ILRC, End SIJS Backlog Coalition, NIPNLG, and Safe Passage Project (Apr. 2, 2025), <https://cilacademy.org/resource-file/quick-guide-defending-sijs-clients-in-removal-proceedings/>. *Working with Unaccompanied Children Aging Out*, CILA (June 3, 2025), <https://cilacademy.org/advanced-training/working-with-unaccompanied-children-aging-out/>.

²¹⁴ See AAO non-precedential decisions: *Matter of A-S-F-D-*, ID #2118258 (AAO Dec. 27, 2018); *Matter of A-V-F-D-*, ID# 2118279 (AAO Dec. 27, 2018); *Matter of E-R-F-D-*, ID# 2118354 (AAO Dec. 27, 2018); *Matter of N-A-F-D-*, ID# 2118313 (AAO Dec. 27, 2018); *Matter of B-E-G-P-*, ID# 1523093 (AAO Apr. 15, 2019).

Hypothetical Case Facts:

Samuel’s biological father abandoned Samuel and his mother, Juliana, when Samuel was a newborn baby. After they were abandoned, Juliana suffered from extreme mental illness but was never formally diagnosed. Five years ago, Juliana was hit by a car and died. Samuel grew up with his great-grandmother who is in her seventies and his little brother, Cristian Leonardo. Samuel’s uncles provided financial support. When Samuel was about thirteen years old, he started having problems with gang members. He was beaten up frequently, and the gang said he would be killed if he did not join them.

Approach in Texas

ADDITIONAL FACT: Samuel resides in Houston with his uncle, Jose, and would like to remain with his uncle.

Samuel needs a custody order. After six months of taking care of Samuel, his uncle Jose can seek legal conservatorship by filing a “Suit Affecting the Parent Child Relationship” (SAPCR). Jose would need to serve Samuel’s father with notice of the lawsuit and service would need to comply with any relevant treaties regarding service of process for the country of Samuel’s father. If the father’s location is unknown, he can be served using citation by publication which requires the appointment of an attorney ad litem. To be appointed conservator, Jose would need to show that it is in Samuel’s best interest for Jose to rebut the presumption that a parent acts in the best interest of their child by showing why denying the relief would significantly impair the child’s physical or emotional development. Jose would also show that Samuel’s father neglected and abandoned him and his mother neglected and abandoned him before she passed away. The court would find that there was no possibility of reunifying with his deceased and estranged parents, and that it was not in his best interest to return to live with his elderly great-grandmother who could not protect him from the gangs.

Approach in Washington

ADDITIONAL FACT: Samuel resides in Seattle with his aunt, Maria, and would like to remain with her.

Samuel can file a petition for dependency. In Washington, a child can self-petition for dependency. He would need to serve his father with notice of the lawsuit. Service must comply with any relevant treaties regarding service of process for the country of Samuel’s father. Service of process by an alternative means, including by publication is possible if it is allowed by the court. If Samuel does not know his father’s current whereabouts, this is a likely option to complete service. In the petition, Samuel would seek dependency because his father abandoned him and his mother neglected and abandoned him before she passed away. The court would find that there was no possibility of reunifying with his deceased and estranged parents, and that it was not in his best interest to return to live with his elderly great-grandmother who could not protect him from the gangs.

Phase 2: USCIS Portion: File for Special Immigrant Juvenile Status (I-360)

Once the state court order is obtained, the child can file a petition for an immigrant visa under the SIJS classification. The child can apply for SIJS by filing Form I-360 with USCIS.²¹⁵

FILING THE PETITION

Form I-360 is the required form for petitioning for SIJS. The I-360 is used for several types of immigration relief, so be sure to only fill out those portions of the form relevant to SIJS. To also show eligibility for SIJS, in addition to the form, it is important to include the following information:²¹⁶

- Cover letter detailing how the client meets the eligibility requirements
- Certified copy of the state court order
- Proof of age—commonly done with a birth certificate

The *CILA Practice Toolkit* and accompanying checklists includes a *Form I-360 Contents Checklist & Where to File* handout. There is a \$250 fee to file the SIJS I-360 petition as of publication. Check the [fee schedule](#) for any updates.

The USCIS website and instructions for Form I-360 contain information about where to file the form. It is important to check for any updates before filing. USCIS’s website provides information on where SIJ petitioners should file Form I-360 and supporting documents. After the petition is filed, you should receive a “Notice of Action” from USCIS with a receipt number and filing date.²¹⁷ Once you have the receipt number, you can use USCIS’s online [case status](#) tool to check the status of a case. You can also contact the [USCIS Contact Center](#) if you have questions about the filing process or case status.

During the adjudication process, USCIS may schedule an interview regarding the petition at a local field office. The law requires USCIS to adjudicate the petition within 180 days.²¹⁸ After reviewing the petition and supporting evidence, USCIS may issue: an approval, denial, Request for Evidence (RFE), or Notice of Intent to Deny (NOID).

OPTIONS IF YOUR CLIENT RECEIVES A RFE, NOID, OR DENIAL

- If your client receives a RFE → The notice will give a time frame to respond to provide additional information and/or documentation. The time frame will not exceed twelve weeks.²¹⁹
- If your client receives a NOID → The deadline to respond cannot exceed 30 days.²²⁰
- If your client receives a denial²²¹ → There are options to appeal. Your client can appeal to a federal court or the AAO.²²² Additionally, there is the option to file a motion to reopen or motion to reconsider with USCIS.²²³

Resources Regarding the Administrative Appeals Office (AAO)

- [NIPNLG Index of Unpublished Administrative Appeals Office Decisions on Special Immigrant Juvenile Status](#)
- [CILA webinar Immigration Legal Research and AAO Appeals](#)

²¹⁵ 8 C.F.R. § 204.11(b).

²¹⁶ 8 C.F.R. § 103.2(b)(8)(iv).

²¹⁷ See *Special Immigrant Juveniles: After You File*, USCIS, <https://www.uscis.gov/working-in-US/eb4/SIJ> (last reviewed/updated Dec. 16, 2025).

²¹⁸ See Section 235(d)(2) of the TVPRA 2008; 8 U.S.C. § 1232(d)(2).

²¹⁹ 8 C.F.R. § 103.2(b)(8)(iv).

²²⁰ *Id.*

²²¹ USCIS Policy Manual, Vol. 6, Pt. J, Ch. 5.

²²² 8 C.F.R. § 103.3. See AAO Practice Manual, USCIS (Apr. 18, 2018), <https://www.uscis.gov/administrative-appeals/aa0-practice-manual>.

²²³ USCIS Policy Manual Vol. 6, Pt. J, Ch. 5.

IMPACT OF AN APPROVED SIJS PETITION

Benefits:

- Approved SIJS provides a pathway to apply for permanent residence and then citizenship.

Limitations:

- SIJS provides a lawful status for the child, but the child is still in “limbo” until the child obtains residency. SIJS alone, without adjustment of status to permanent resident, does not constitute relief from removal. See more information below in the section, “[Client in Removal Proceedings and Has Pending or Approved SIJS Petition](#),” regarding how an approved SIJS petition impacts children in removal proceedings.
- SIJS does not grant work authorization. There is a possibility for individuals with approved SIJS to be eligible for work authorization through the deferred action process, but unfortunately not all receive deferred action. More information is included below.
- SIJS does not grant re-entry to the United States if the child leaves. There is no option for travel.
- Neither parent of the SIJS petitioner can obtain immigration status through their child.²²⁴

DEFERRED ACTION

Under a policy started in 2022, SIJS petitioners were eligible for deferred action if they had an approved SIJS petition (meaning an approved Form I-360) and were waiting to adjust solely because a visa number was unavailable. USCIS generally granted SIJS-based deferred for four years, with employment authorization eligibility under the (c)(14) category; this provided work authorization as a bridge until youth could adjust their status. Advocates working with vulnerable youth applauded this protection provided to thousands of immigrant youth across the country.

In June 2025, USCIS issued a [policy alert](#) rescinding its policy of granting deferred action to SIJS recipients who are unable to adjust status due to visa number unavailability. The USCIS alert also provided that USCIS may terminate deferred action and revoke SIJS-based employment authorization before the validity period expires. These changes were reflected in the [USCIS Policy Manual](#) in Vol. 6: Immigrants, Pt. J, Special Immigrant Juveniles, Ch. 4, Adjudication. After the June 2025 policy change, USCIS announced that it would no longer consider SIJ classification alone as a basis for deferred action, effectively ending this crucial protection for many youth stuck in the visa backlog. SIJs already granted deferred action would retain the protection from removal and related work authorization until their deferred action expires. However, USCIS would no longer grant deferred action to SIJs once it expires, and newly approved SIJs who do not have a visa immediately available would face a dangerous gap in protection from deportation and may be ineligible for employment authorization if they do not qualify for a work permit under a different basis.

In July 2025, the National Immigration Project and partners filed [litigation](#) (*A.C.R. et al. v. Noem et al.*, No.1:25-cv-3962) on behalf of SIJS youth to challenge the change in policy. The litigation has successfully led to a stay of the rescission of the deferred action policy. As of publication, this case is still pending. Check [NIPNLG’s webpage](#) for case updates. Learn more in CILA’s [blog post](#) about the attempt to terminate deferred action and NIPNLG and the End SIJS Backlog Coalition’s [Practice Alert: Termination of the SIJS Deferred Action Policy](#).

²²⁴ INA § 101(a)(27)(J); 8 U.S.C. § 1101(a)(27)(J).

CLIENT IN REMOVAL PROCEEDINGS AND HAS PENDING SIJS PETITION

You may find yourself in immigration court with a client who either has a pending SIJS petition or an approved SIJS petition awaiting visa availability to adjust status. Immigration judges (IJs) do not have jurisdiction to make decisions about the SIJS petition—only USCIS can adjudicate this petition. Further, IJs cannot adjudicate an SIJS petitioner’s application for adjustment of status until USCIS approves the SIJS petition and there is a visa available (see more below). There are a few procedural options to consider during these waiting periods.

TIP: When pursuing any procedural options, emphasize to the immigration judge that SIJS is a humanitarian form of relief and that a state court judge determined that it is not in the child’s best interest to return to their home country. This alone will not suffice, but it can be helpful to include in your arguments for why the child’s proceedings should be terminated, placed on hold, or continued for purposes of eventual adjustment of status.

Each case is unique, and the different procedural options should be considered based on the current law and policy, as well as information about the individual adjudicator’s approach and case strategy. This is an area where there are frequent changes, and there are many differences adjudicator to adjudicator. Immigration court procedural tools are covered in [Section IV.C.](#) of the Guide and in CILA’s in-depth resource, *Procedural Options in Removal Proceedings for Youth*. Moreover, read the resource, *Quick Guide: Defending SIJS Clients in Removal Proceedings*, written by ILRC, the End SIJS Backlog Coalition, NIPNLG, Safe Passage Project, and CILA. This helpful resource provides specific information and strategies related to SIJS youth navigating removal proceedings.

Phase 3: File for Adjustment of Status

Once a child has an approved I-360 petition, the child is eligible to apply for lawful permanent residence. However, the child may apply for adjustment of status only once a visa number is available. The child should apply using USCIS [Form I-485](#), *Application to Register Permanent Residence or Adjust Status*. Generally, there is a filing fee associated with Form I-485, but as of publication, there is no fee for this form for special immigrant juveniles if the form is filed with USCIS.²²⁵ If Form I-485 is filed in immigration court, then there is a required fee.²²⁶ Additionally, there are some inadmissibility grounds that do not apply to special immigrant juveniles or that may be waived.²²⁷

SIJS Policy Advocacy

Learn more about ongoing policy efforts by visiting the website for the [End SIJS Backlog Coalition](#), the [ABA](#), and [CILA](#).

²²⁵ G-1055, *Fee Schedule*, USCIS, <https://www.uscis.gov/g-1055> (last reviewed/updated Aug. 1, 2025). *Types of Appeals, Motions, and Required Fees*, EOIR, <https://www.justice.gov/eoir/types-appeals-motions-and-required-fees> (last updated July 18, 2025). See *FAQ on H.R.1 Fees for USCIS and EOIR Benefits*, CLINIC, <https://www.cliniclegal.org/resources/fee-waivers-uscis/faq-hr1-fees-uscis-and-eoir-benefits> (Sept. 9, 2025).

²²⁶ *Id.*

²²⁷ See INA § 245(h); 8 U.S.C. § 1255(h); 8 C.F.R. § 245.1(e)(3).

SIJS-BASED ADJUSTMENT OF STATUS ELIGIBILITY REQUIREMENTS

To be eligible for adjustment of status, your client must:

- Have an approved I-360 petition;
- Have no bars to adjustment;
- Be admissible or qualify for a waiver;²²⁸ and
- Merit a favorable exercise of discretion.²²⁹

WHEN CAN MY CLIENT FILE THE ADJUSTMENT OF STATUS APPLICATION?

When an individual can file for adjustment of status based on SIJS depends on several factors. The first step is to determine whether your client will be filing their application before USCIS or EOIR as filing protocols and procedures vary between the two. If a visa number is available, and the child is not in removal proceedings or is an “arriving alien” (entered through a port of entry),²³⁰ the child theoretically could file the I-485 adjustment of status application at the same time as the I-360 SIJS petition with USCIS for concurrent processing. However, at this time all countries of origin are experiencing a backlog, and it is unlikely that concurrent processing will be a possibility for individuals eligible for SIJS.

The Visa Bulletin and Priority Dates:

There are a limited number of visas available each year for certain categories of people seeking to adjust their status. The Department of State (DOS) releases a monthly [Visa Bulletin](#) detailing visa availability in the various immigrant visa preference categories. Special immigrant juveniles fall under the 4th preference employment-based (EB-4) category (even though SIJS is not technically an employment-based form of relief). In addition to the designated visa preference category, visa availability is based on a petitioner’s country of birth or nationality, and their “priority date.” The priority date is the date USCIS *received* your client’s SIJS I-360 petition, and it is used to check the DOS Visa Bulletin and USCIS [Filing Charts](#) for ability to file and visa availability. Your client’s priority date can be found on your client’s USCIS I-360 Receipt Notice. The Visa Bulletin includes two charts, Chart A “Final Action Dates” and Chart B “Dates for Filing.” The Final Action Date chart shows whether individuals have a visa available depending on their priority date. If an individual has a priority date before the final action date in the chart, then a visa is available. Read more in a [resource](#) by CILA, the End SIJS Backlog Coalition, NIPNLG, and ILRC.

TIP: It is best practice to check the DOS Visa Bulletin monthly for movement in the EB-4 visa preference category until your client’s priority date is current for adjudication. While the wait period between the filing of the SIJS petition to visa availability cannot be precisely known, as of publication, the wait is long and can take many years.

WHERE SHOULD MY CLIENT FILE THE ADJUSTMENT OF STATUS APPLICATION?

The child should file their adjustment of status application with USCIS if they are not in removal proceedings, or if they are in removal proceedings but are considered an arriving alien.²³¹ If the child is not considered an arriving alien and is in removal proceedings which have not been dismissed or terminated, then the child should file the application with the immigration court. Also check out CILA’s [blog post](#) on the topic *Adjusting Without Jurisdiction: A Cautionary Tale*.

228 See CILA, *Adjustment of Status Inadmissibility Chart* (Jan. 7, 2021), <https://cilacademy.org/resource-file/sijs-adjustment-of-status-inadmissibility-chart/>.

229 See USCIS Policy Manual Vol. 1, Pt. E, Ch. 8 and USCIS Policy Manual Vol. 7, Pt. A, Ch. 1 and 10. For more information, review ILRC’s practice advisory. Peggy Gleason, *USCIS Policy Manual Makes Sweeping Changes to Discretion*, ILRC (Mar. 2021), <https://www.ilrc.org/uscis-policy-manual-makes-sweeping-changes-discretion>. Review additional discretion changes made in 2025. USCIS, *Policy Alert: Impact of INA 212(f) on USCIS’ Adjudication of Discretionary Benefits*, PA-2025-26 (Nov. 27, 2025), <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20251127-Discretion.pdf>.

230 See 8 C.F.R. § 1.2 and 8 C.F.R. § 1001.1(q) for the definition of an arriving alien.

231 *Id.*

Filing for Adjustment of Status with USCIS:

Every month USCIS indicates on their [website](#) whether applicants may use the Dates for Filing chart or the Final Action Dates chart to determine when individuals can file their adjustment of status application. Note that if USCIS determines that there are more visas available in a given fiscal year than there are known applicants for such visas, they may use the DOS Dates for Filing chart. Otherwise, USCIS will use the DOS Final Action Dates chart. Even if USCIS uses the DOS Dates for Filing chart, applicants must still wait for their priority date to become current on the Final Action Dates chart before USCIS will adjudicate their application.

Filing Adjustment of Status with EOIR (Immigration Court):

When *filing* for adjustment of status in immigration court, advocates frequently file by the Dates for Filing chart if that is what USCIS is currently using based on information on their [website](#), but EOIR must always wait for a visa to become available under the [DOS Visa Bulletin](#) Final Action Dates chart before *adjudicating* the case.

IS THE CHILD ADMISSIBLE OR DOES THE CHILD QUALIFY FOR A WAIVER?

To be eligible for adjustment of status, the child must be admissible. Grounds of inadmissibility are reasons why a person can be refused admission and/or removed from the United States including on health-related grounds, economic grounds, criminal grounds, and more.

There are also certain grounds of inadmissibility that are inapplicable to special immigrant juveniles.²³² Since the grounds are inapplicable to SIJS-based adjustment, no waiver is necessary.

INADMISSIBILITY GROUNDS THAT ARE INAPPLICABLE TO SPECIAL IMMIGRANT JUVENILES (NO WAIVER NECESSARY)

INA § 212(a)(4) Public charge

INA § 212(a)(5)(A) Labor certification

INA § 212(a)(6)(A) Present without admission or parole

INA § 212(a)(6)(C) Misrepresentation, including false claim to U.S. citizenship

INA § 212(a)(6)(D) Stowaways

INA § 212(a)(7)(A) Immigrant not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document

INA § 212(a)(9)(B) Unlawfully present

²³² INA § 245(h)(2)(B); 8 U.S.C. § 1255(h)(2)(B); 8 C.F.R. § 245.1; USCIS Policy Manual, Vol. 7, Pt. F, Ch. 7.

Many grounds of inadmissibility which do apply to special immigrant juveniles can be waived with the submission of [Form I-601, Application for Waiver of Grounds of Inadmissibility](#) and accompanying evidence.²³³ There are more generous waivers for special immigrant juveniles seeking adjustment of status than waivers of inadmissibility grounds for most forms of relief. The standard for the SIJS-specific waiver is whether it should be granted “for humanitarian purposes, family unity, or when it is otherwise in the public interest.”²³⁴ Read more about inadmissibility grounds and the waiver standard in ILRC’s [resource](#). The chart below is a non-exhaustive list of grounds that may come up for SIJS clients.

INADMISSIBILITY GROUNDS THAT ARE APPLICABLE TO SPECIAL IMMIGRANT JUVENILES BUT WAIVABLE (USING FORM I-601)

INA § 212(a)(1) Health-related grounds

INA § 212(a)(2)(D) Prostitution and commercialized vice

INA § 212(a)(2)(H) Significant traffickers in persons

INA § 212(a)(2)(I) Money laundering

INA § 212(a)(3)(D) Immigrant membership in a totalitarian party

INA § 212(a)(6)(B) Failure to attend removal proceedings

INA § 212(a)(6)(E) Smugglers

INA § 212(a)(6)(F) Subject of civil penalty

INA § 212(a)(6)(G) Student visa abusers

INA § 212(a)(8) Ineligible for citizenship

INA § 212(a)(9)(A) Certain persons previously removed

INA § 212(a)(9)(C) Unlawfully present after previous immigration violations

INA § 212(a)(10) Miscellaneous grounds (polygamists, unlawful voters, etc.)

²³³ *Id.*

²³⁴ USCIS Policy Manual, Vol. 7, Pt. F, Ch. 7 (citing INA § 245(h)(2)(B); 8 C.F.R. § 245.1(e)(3)(v)).

There are also some inadmissibility grounds that apply to special immigrant juveniles that cannot be waived under the SIJS-specific waiver, but they may be waivable under a different statutory authority.²³⁵ The [USCIS Policy Manual](#), Vol. 9 provides additional information on waivers.

INADMISSIBILITY GROUNDS THAT ARE APPLICABLE TO SPECIAL IMMIGRANT JUVENILES BUT NOT WAIVABLE UNDER SIJS-SPECIFIC WAIVER

INA § 212(a)(2)(A) Conviction of certain crimes²³⁶

INA § 212(a)(2)(B) Multiple criminal convictions, aggregate sentences 5 years or more

INA § 212(a)(2)(C) Controlled substance traffickers (anyone who the Attorney General has “reason to believe” is a trafficker (i.e., does not require a “conviction” in adult court or juvenile delinquency)

INA § 212(a)(3)(A) Entrance to engage solely, principally, or incidentally in unlawful activity, particularly espionage

INA § 212(a)(3)(B) Terrorist activities

INA § 212(a)(3)(C) Serious adverse foreign policy consequences

INA § 212(a)(3)(E) Participants in Nazi persecutions, genocide or the commission of any act of torture or extrajudicial killing

²³⁵ See [USCIS Policy Manual](#), Vol. 7, Pt. F, Ch. 7, note 28.

²³⁶ INA § 245(h)(2)(B); 8 U.S.C. §1255(h)(2)(B) and INA § 212(h); 8 U.S.C. § 1182(h). Notably, non-waivable bars do not include the portion “related to a single offense of simple possession of 30 grams or less of marijuana. See *Matter of Moradel*, 28 I&N Dec. 310 (BIA 2021). See also Kathy Brady, Zachary Nightingale, Matt Adams, *Immigrants and Marijuana*, ILRC (May 21, 2021), <https://www.ilrc.org/immigrants-and-marijuana>.

A NOTE ON JUVENILE DELINQUENCY & JUVENILE RECORDS

The [USCIS Policy Manual](#) states that “[f]indings of juvenile delinquency are not considered criminal convictions for purposes of immigration law.” The Manual goes on to state, “However, certain grounds of inadmissibility do not require a conviction. In some cases, certain conduct may be sufficient to trigger an inadmissibility ground. Furthermore, findings of juvenile delinquency may also be part of a discretionary analysis.” It is important to read the Policy Manual further if your client has any delinquency or criminal history of arrests and explore the issue.

Juvenile Records

State laws often prioritize the confidentiality of juveniles’ delinquency records, but it is important to keep in mind how USCIS will address delinquency when adjudicating an application for adjustment of status. The [USCIS Policy Manual Vol. 7, Pt. F, Ch. 7](#) details what USCIS is looking for if the youth has juvenile delinquency. For example, it states:

- “[A]n adjustment applicant must disclose all arrests and charges. If any arrest or charge was disposed of as a matter of juvenile delinquency, the applicant must include the court or other public record that establishes this disposition.”
- “In the event that an applicant is unable to provide such records because the applicant’s case was expunged or sealed, the applicant must provide information about the arrest and evidence demonstrating that such records are unavailable under the law of the particular jurisdiction.”

View CILA’s 2024 [webinar](#) to learn more about how these issues can affect a youth’s case.

MERITS EXERCISE OF FAVORABLE DISCRETION

In addition to ensuring the applicant meets all requirements to file, the USCIS officer will also determine if the individual merits favorable discretion in approving the application or not.²³⁷

TIP: Always include positive discretionary factors in your evidence and testimony for adjustment of status if needed to outweigh any negative discretionary factors.

²³⁷ See [USCIS Policy Manual](#), Vol. 7, Pt. F, Ch. 7.

FILING THE ADJUSTMENT OF STATUS APPLICATION

CHECKLIST FOR SEEKING TO ADJUST STATUS

The application packet should include:²³⁸

- [Form I-485](#), *Application to Register Permanent Residence or Adjust Status*
- Appropriate fee (if any) OR [Form I-912](#), *Request for Fee Waiver* (if permitted)
- Copy of the receipt or approval notice (Form I-797) for the applicant's SIJS petition (unless the applicant is filing the petition together with Form I-485)
- Two passport style photos
- Copy of government issued identity document with photograph (if available)
- Copy of birth certificate (or proof of unavailability/non-existence and other acceptable evidence of birth)
- [Form I-693](#), *Report of Medical Examination and Vaccination Record* completed by a civil surgeon— Check USCIS's website to [find a doctor](#). (At time of publication, this is required to be submitted along with the Form I-485.)
- Certified police and court records of juvenile delinquency findings, criminal charges, arrests, or convictions (if applicable)
- Form I-601, *Application for Waiver of Grounds of Inadmissibility* (if applicable), with any appropriate fees or a fee waiver, if necessary.
- Evidence to show positive equities since claims are discretionary.

Additionally, an applicant has the option to seek an EAD by filing [Form I-765](#), *Application for Employment Authorization* and/or a travel document by filing [Form I-131](#), *Application for Travel Document*.

FILING THE APPLICATION WITH USCIS

At the time of publication, adjustment of status applications filed with USCIS should be sent to a USCIS lockbox, and the exact location will depend on where the petitioner lives. Check the [USCIS website](#) for more information and any updates on where to submit the I-485 for special employment based categories. If necessary, an interview will be scheduled for the applicant at a local field office. The application could either be approved or denied by USCIS.

If the application is denied, an applicant can appeal to the AAO, file a motion to reopen/reconsider, or re-apply at a later time. It is also possible for USCIS to issue a NTA and initiate removal proceedings for the child. If this occurs, the child can renew their I-485 application before the immigration court.

²³⁸ *Id.* See *Checklist of Required Initial Evidence for Form I-485 (for informational purposes only)*, USCIS, <https://www.uscis.gov/i-485Checklist> (last reviewed/updated July 8, 2025).

FILING THE APPLICATION IN IMMIGRATION COURT

If the child is in removal proceedings, then the court will decide their application for adjustment of status. In this situation, the applicant should:

- Provide an appropriate [fee OR](#) request to waive the I-485 filing fee and biometrics fee via motion with the court. See Immigration Court Practice Manual (ICPM) [Ch. 3.4](#) for instructions.
- Submit the immigration judge’s order waiving fees along with a copy of the I-485 with USCIS as specified in the EOIR [pre-hearing instructions](#).
- Once the USCIS Service Center issues a Receipt Notice, file a copy of that along with the adjustment of status packet with the immigration court and serve the filed documents on the appropriate government attorney in the case.
 - The Receipt Notice can be used to file for an EAD with USCIS. This is important if there is a lengthy time period before the individual hearing.

The adjudication process before the immigration court typically involves:

- The USCIS Service Center will issue a biometrics appointment notice, and the applicant must attend the appointment.
- The immigration judge will schedule an individual hearing in the case. Before the individual hearing, it is recommended to follow up with the Office of the Principal Legal Advisor (OPLA) to ensure that the background check has been completed.
- At the individual hearing, the immigration judge will adjudicate the I-485 application packet.
- Following the hearing, if the application is approved, follow the [post-order instructions](#) to assist your client in obtaining a green card which is processed by USCIS.
- If the application is denied, your client can appeal to the BIA, but that is the last level of appeal. There is no option to appeal to federal court.

IMPACT OF AN APPROVED APPLICATION²³⁹

RIGHTS OF LAWFUL PERMANENT RESIDENCE	RESPONSIBILITIES OF LAWFUL PERMANENT RESIDENCE
Live and work permanently in the United States	Maintain a current address with USCIS
Leave and return to the United States under certain conditions	Obey all federal, state, and local laws
Attend college or join the U.S. Armed Forces	Pay federal, state, and local income taxes
Apply for citizenship once eligible (after 5 years)	Register with the Selective Service if a male between 18 and 26 years of age
Petition for certain relatives (not parents)	Maintain lawful immigration status

²³⁹ *Rights and Responsibilities of a Green Card Holder (Permanent Resident)*, USCIS, <https://www.uscis.gov/green-card/after-green-card-granted/rights-and-responsibilities-a-green-card-holder-permanent-resident> (last reviewed/updated July 15, 2015).

Links to Help You with YOUR CLIENT'S SPECIAL IMMIGRANT JUVENILE CASE

- Check out CILA's 101 [webinar: Introduction to Special Immigrant Juvenile Status \(SIJS\) & SIJS-based Adjustment of Status](#) (1 hour, 8 minutes), March 2025. CILA also offers a [Special Immigrant Juvenile Status \(SIJS\) Overview](#) resource, December 2023.
- Review the [CILA Practice Toolkit](#) and accompanying resource, [Checklists, Cheat Sheets, & Organizational Documents](#), June 2024. The resource is designed for those new to taking on a full children's immigration case and provides guidance, practical tips, and tools.
- If your client is in removal proceedings, read through the [Quick Guide: Defending SIJS Clients in Removal Proceedings](#) created by CILA, the End SIJS Backlog Coalition, ILRC, NIPNLG, and Safe Passage Project, for information and strategy suggestions, April 2025.
- If you are working with an older youth, view CILA's [recorded presentation: Working with Unaccompanied Children Aging Out](#) (1 hour), October 2025.
- Review CILA's [Overview of New Special Immigrant Juvenile Status Regulations](#) to get more information about the 2022 SIJS regulation updates, May 2022.
- Use CILA's [SIJS Case Theory and Evidence Matrix](#) to stay organized and create a case strategy.
- In some instances, state court judges seek proof of international law. CILA and Justice in Motion released affidavit packets regarding paternity law in [El Salvador](#), [Guatemala](#), and [Honduras](#).
- There are several state-specific resources to help you obtain orders in state court for youth seeking SIJS. Check out the CILA SIJS Manuals for practitioners in [Maryland](#) (created in collaboration with KIND, 2025), [New Jersey](#) (created in collaboration with KIND, 2025), [Virginia](#) (created in collaboration with Ayuda, 2024), [New York](#) (created in collaboration with The Door, 2024), [Florida](#) (created in collaboration with the Orlando Center for Justice, 2023), and [Texas](#) (2023).
- Watch CILA's [webinar Overcoming Analysis Paralysis: Practical Considerations for Adjusting Status Based on SIJS](#) to learn about filing for adjustment of status (1 hour, 40 minutes), November 2021.
- Review CILA's [SIJS Adjustment of Status Inadmissibility Chart](#), January 2021.
- View CILA's webinar [Record Requests in the SIJS/AOS Context](#) (1 hour, 32 minutes), September 2022.
- View CILA's flowchart [Petition for Special Immigrant Juvenile Status Across Systems](#) to see a visual of the course of a SIJS case through the different stages which can be helpful in explaining the process.
- Check out CILA's youth-facing resource on the [Pathway to Special Immigrant Juvenile Status \(SIJS\) and a Green Card](#), available in [English](#), [Spanish](#), [French](#), [Haitian Creole](#), and [Arabic](#).
- Learn about visa availability with CILA's [Quick Reference Guide – SIJ Status and EB-4 Immigrant Visa Availability](#), December 2023 and [Breaking Down the Visa Bulletin: What SIJS Advocates Need to Know](#), by CILA, the End SIJS Backlog Coalition, NIPNLG, and ILRC, April 2024.
- Read ILRC's Practice Advisory [What are the Immigration Consequences of Delinquency?](#), Rachel Prandini, March 2020, if delinquency is an issue in your case. View CILA's [webinar: Crimmigration & Delinquent Conduct: Nuts & Bolts for Advocates Serving Unaccompanied Youth](#) (1 hour, 15 minutes), June 2024.
- View the CILA-NILA [webinar: Litigating SIJS Delay Cases: Mandamus and APA](#) (53 minutes), January 2021 & review the accompanying [Mandamus and APA Actions for Special Immigrant Juvenile Petitions practice advisory](#) and [Example Template Complaint for SIJS Delay Cases](#), January 2021.
- Watch the CILA-NILA [webinar: Challenging USCIS' Denial of A Petition For SIJS Under The APA](#) (60 minutes), September 2021 and review the accompanying practice advisory, [Immigration Lawsuits and the APA: The Basics of a District Court Action](#), September 2021.

E. U and T Visas

U Nonimmigrant Status (U Visas)

Generally, U visas are available for victims/survivors of certain crimes who are helpful to law enforcement or other authorities in the investigation or prosecution of the criminal activity. If you think your client is eligible to file for a U visa, this is something to explore more closely. This Guide only gives an overview of the option for relief to get you started.

U Visa Key Sources of Law

- INA § 101(a)(15)(U); 8 U.S.C. § 1101(a)(15)(U)
- INA § 212(d)(14); 8 U.S.C. § 1182(d)(14) (inadmissibility waiver)
- INA § 214(p); 8 U.S.C. § 1184(p)
- INA § 245(m) 8 U.S.C. § 1255(m) (adjustment)
- 8 C.F.R. § 212.17
- 8 C.F.R. § 214.14
- 8 C.F.R. § 245.24 (adjustment)
- Victims of Trafficking and Violence Protection Act of 2000 (TVPA) and reauthorizations
- Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005) and reauthorization

ELIGIBILITY REQUIREMENTS

To be eligible for a U visa, an individual must meet the following criteria:²⁴⁰

- Be a victim of a designated crime (qualifying crime) that occurred in the United States or violated U.S. law
- Cooperate with law enforcement or other government authorities investigating or prosecuting the criminal activity, which occurs if the applicant
 - Possesses information about the crime and
 - Has been, is being, or is likely to be helpful in investigation or prosecution
- Suffered “substantial physical or mental abuse” as result of the crime
- Is admissible or eligible for a waiver

²⁴⁰ INA § 101(a)(15)(U); 8 U.S.C. § 1101(a)(15)(U). See also the USCIS website with information on eligibility and about filing the petition.

Who is considered a victim? A victim can be the direct victim, or at times a bystander victim or an indirect victim.²⁴¹

What is a qualifying crime? The law provides for designated criminal activities that can serve as a qualifying crime. The list includes:

rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; stalking; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; fraud in foreign labor contracting . . . or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes.²⁴²

The criminal activity can include “one or more of the following or any similar activity in violation of Federal, State, or local criminal law.”²⁴³ The advocate must identify the designated criminal activity and law that was violated.

Does a child need to cooperate with law enforcement? If the victim is under age 16, then “the parent, guardian, or next friend” of the child may meet the requirements for cooperation.²⁴⁴

Does it matter when the crime occurred? No. There is not a temporal requirement between when the crime occurred and when the petitioner files for a U visa. The crime could have occurred many years ago.

Does the outcome of the investigation or prosecution matter? There is no requirement that criminal charges were pursued or that there was a conviction. However, some law enforcement agencies may resist certifying a more remote crime, so be prepared to make as many persuasive arguments that you can to the certifying agency when requesting certification or if the agency declines to certify the crime. For example, if the agency declines to certify the crime because prosecution did not lead to a conviction, you can demonstrate how your client was cooperative with the agency in assisting prosecution. You can also attach DHS’s *U Visa Law Enforcement Resource Guide* to the certification request and pull key language from the resource reminding the certifying agency that a conviction is not required to certify the crime. For example, the guide states, a certifying official “may sign a Form I-918B regardless of the status or stage of the investigation or prosecution. Charges do not have to be filed, nor does an investigation or prosecution need to be open or completed at the time a certification is signed.”

Petitioner’s Location

While the crime must occur in the United States or have violated U.S. law, the petitioner does not need to be located in the United States when the petition is filed and can seek a U visa while abroad. If the U visa petition is approved, they would have to consular process to enter the United States.

241 See 8 C.F.R. 214.14(a)(14); Federal Register, Vol. 72, No. 179, 53016-53017 (Sept. 17, 2007) regarding indirect and bystander victims. See also Ariel Brown, Kate Mahoney, *Using Indirect & Bystander Victim Theories to Expand U Visa Eligibility for Families* (Jan. 24, 2025), <https://www.ilrc.org/resources/using-indirect-bystander-victim-theories-expand-u-visa-eligibility-families>.

242 INA § 101(a)(15)(U)(iii); 8 U.S.C. § 1101(a)(15)(U)(iii).

243 *Id.*

244 8 C.F.R. § 214.14(c)(2)(ii).

Filing the U Visa Petition

- **Certification of Helpfulness:** After assessing eligibility for your client, one of the first steps is to get a signature from a certifying agency on the required [Form I-918, Supplement B, U Nonimmigrant Status Certification](#). This form certifies your client’s possession of information relating to the criminal activity, as well as helpfulness and cooperation with authorities. The certifying agency can be a local, state, or federal judge, law enforcement agency, or prosecutor for instance.²⁴⁵ It is important to remember that if you get the I-918 Supplement B signed, the certification only lasts six (6) months after the signature, meaning you will need to file the U visa petition before the certification expires.²⁴⁶ Otherwise, you will have to get the form signed again by the certifying agency, which can prove to be difficult.

- **TIP:** Obtaining a signed law enforcement certification can sometimes be a difficult process. It may be best to talk with local advocates for any feedback regarding where to start when asking for a signature, including learning the best contact information and the likelihood of receiving a signed certification from that office. Ensure that you have relevant documents regarding your client’s situation so you can effectively advocate for a signature.

- **Necessary Forms:** In addition to the I-918, Supplement B, you will need to file the primary form for the petition, [Form I-918, Petition for U Nonimmigrant Status](#). If your client has any derivatives, you need to file [Form I-918, Supplement A, Petition for Qualifying Family Member of U-1 Recipient](#) for each qualifying family member. The USCIS website provides a checklist of suggested evidence of what to send with your petition. If your client has inadmissibility grounds at issue, you should also file [Form I-192, Application for Advance Permission to Enter as a Nonimmigrant](#) to apply to waive those grounds of inadmissibility.

- **TIP:** Know that one benefit to U visas is that many grounds of inadmissibility can potentially be waived. ASISTA’s practice advisory on [Representing Criminalized Survivors: Impact of Criminal Inadmissibility on Survivor-Based Immigration Remedies](#) and CLINIC’s [Frequently Asked Questions on Common U Visa Inadmissibility Issues](#) cover additional information about inadmissibility grounds and the waiver process.
- **TIP:** Keep in mind that previously, in 2019 through late 2020, USCIS rejected I-918 U visa petitions as incomplete if they included any blank areas.²⁴⁷ As a result of litigation in *Vangala v. USCIS*, in 2021, USCIS stopped this practice, but also stated, “we may reject your form or your case might take more time if you leave required spaces blank, if you do not respond to questions related to filing requirement, or if you omit any required initial evidence, as indicated in the form instructions or regulations.”²⁴⁸

Resources for Working with Agencies

Agencies can have different levels of experience with U visa certifications. Some may be familiar with these types of requests and have information available online about how to make a request for certification. Others may know nothing about the process. If an agency needs guidance, refer to them to USCIS’s [U Visa Law Enforcement Resource Guide](#) and webpage with [Information for Certifying Officials: Law Enforcement, Judges and Other Agencies](#).

245 8 C.F.R. § 214.14(a)(2)-(3).

246 8 C.F.R. § 214.14(c)(2)(i).

247 See *Practice Advisory: Insight into USCIS’s Application of the “No-Blanks” Policy to U-Visa Petitions*, ASISTA (Nov. 23, 2020), <https://asistahelp.org/new-practice-advisory-insight-into-uscis-application-of-the-no-blanks-policy-to-u-visa-petitions/>.

248 See *USCIS Confirms Elimination of “Blank Space” Criteria*, USCIS, <https://www.uscis.gov/news/alerts/uscis-confirms-elimination-of-blank-space-criteria> (last reviewed/updated Apr. 1, 2021).

Can Filing a U Visa Petition Lead to Removal Proceedings?

One of the factors to consider when assessing types of relief is whether applying can increase the risk of the client being placed in removal proceedings. For any USCIS request, one risk to consider is if the application/petition is denied then will the client be placed into removal proceedings. Review USCIS's [Policy Guidance on Issuance of Notices to Appear \(NTAs\)](#) from February 2025. The memo provides guidance and gives USCIS some discretion. Notably, the memo states, "USCIS will issue an NTA where, upon issuance of an unfavorable decision on a benefit request, the [noncitizen] is not lawfully present in the United States."

- **Derivatives:** A principal petitioner who is under age 21 may petition for a spouse,²⁴⁹ children, parents, and unmarried siblings under age 18.²⁵⁰ A principal petitioner who is age 21 or older may petition for a spouse and children.²⁵¹
- **Wait Times:** There is a cap of 10,000 on the number of principal petitioners (not derivatives) that can be granted a U visa each year.²⁵² Far more individuals than that apply annually. USCIS data shows the high number of pending U visas for victims of criminal activities with over 238,000 pending at the end of FY 2024.²⁵³ The USCIS website shows long [processing times](#) to receive issuance of a bona fide determination or notice that the individual is placed on the wait list, and there are many more years to wait after that because of the volume of petitioners and the annual cap.²⁵⁴
- **Bona Fide Determination (BFD):** On June 14, 2021, USCIS [modified their procedures](#) for evaluating U visas and provided a pathway for petitioners waiting for a visa to obtain interim benefits, including work authorization. The BFD process applies to all Form I-918 petitions currently pending and those filed on or after June 14, 2021. The [USCIS Policy Manual](#) explains the BFD process in Vol. 3, Pt. C, Ch. 5. Under this process, USCIS should do an initial review of the petition to determine if they should be granted a discretionary BFD. If granted, the petitioner and their qualifying family members may receive a BFD EAD and deferred action for four years.²⁵⁵ A BFD is sufficient to show to ICE and EOIR that the "petitioner is also considered to have established a prima facie case for approval within the meaning of INA 237(d)(1)."²⁵⁶ Those who do not receive a BFD proceed to the full waiting list adjudication. The [USCIS Policy Manual Vol. 3, Pt. C, Ch. 4](#) includes a flowchart with the adjudication processes and various outcomes in an appendix. Learn more about the BFD process

249 In *Medina Tovar v. Zuchowski*, the Ninth Circuit Court of Appeals, found that it was an arbitrary and capricious requirement for the spousal relationship to have to exist at the time of filing the U visa petition. USCIS is applying the decision nationwide, and it applies to both U and T visas. In a June 2021 USCIS Policy Alert regarding U visas, USCIS stated, "when confirming a relationship between the principal petitioner and the qualifying family member which is based on marriage, USCIS will evaluate whether the relationship existed at the time the principal petition was favorably adjudicated, rather than when the principal petition was filed." [USCIS Policy Manual Vol. 3, Pt. C, Ch. 2, fn. 4](#). See also ILRC, ASISTA, and CLINIC, *Updated Practice Alert: U Visa and T Visa "After-Acquired Spouse" Cases* (June 11, 2021), <https://cliniclegal.org/resources/humanitarian-relief/u-visas/updated-practice-alert-u-visa-and-t-visa-after-acquired>.

250 INA § 101(a)(15)(U)(ii)(I); 8 U.S.C. § 1101(a)(15)(U)(ii)(I).

251 INA § 101(a)(15)(U)(ii)(II); 8 U.S.C. § 1101(a)(15)(U)(ii)(II).

252 INA § 214(p)(2); 8 U.S.C. § 1184(p)(2).

253 *Number of Form I-918, Petitions for U Nonimmigrant Status by Fiscal Year, Quarter, and Case Status Fiscal Years 2009-2025*, USCIS, https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.uscis.gov%2Fsites%2Fdefault%2Ffiles%2Fdocument%2Fdata%2Fi918u_visastatistics_fy2025_q2.xlsx&wdOrigin=BROWSELINK.

254 See also NIWAP, State Justice Institute, American University Washington College of Law, *U Visa Timeline with Background Checks* (Aug. 11, 2024), <https://niwaplibrary.wcl.american.edu/wp-content/uploads/3E-U-Visa-Timeline-with-Background-Checks-4.1.19-with-edits-PRINTED.pdf>.

255 In 2023, USCIS issued additional guidance regarding the BFD process for qualifying family members. See USCIS, *Policy Alert: Bona Fide Determination Process Qualifying Family Members of U Nonimmigrant Victims of Qualifying Crimes*, PA-2023-22 (Aug. 11, 2023), <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20230811-VictimsOfCrimes.pdf>. USCIS Policy Manual Vol. 3, Pt. C, Ch. 5.

256 USCIS Policy Manual, Vol. 3, Pt. C, Ch. 5. INA § 247(d)(1); 8 U.S.C. § 1227(d)(1).

from USCIS's [FAQ](#) (last reviewed/updated Oct. 29, 2022), CLINIC's [Bona Fide U Status Petitioners to be Given Deferred Action and EADs](#) (June 2021), and ASISTA's [Policy Alert: Bona Fide Employment Authorization for U Visa Petitioners](#) (June 2021).

- **Waiting List:** Petitions that are found to be approvable by USCIS are placed on the waiting list for the visas. Principal petitioners and qualifying family members on the waiting list may be eligible for deferred action, employment authorization, or parole.²⁵⁷

CLIENT IN REMOVAL PROCEEDINGS AND HAS PENDING U VISA

If your client is in removal proceedings and has a pending U visa petition, consider seeking to delay or close the proceedings while USCIS adjudicates the petition. The best course of action may depend on the specific facts involved, the immigration judge (IJ), and the government attorney assigned in your case. There are procedural tools to consider when representing someone in immigration court. See [Section IV.C.](#) and refer to CILA's resource [Procedural Options in Removal Proceedings for Youth](#).

BENEFITS OF AN APPROVED U VISA PETITION

If your client is successful, then they are eligible for employment authorization and lawful non-immigrant status for four years.²⁵⁸ After three of the four years in U visa status, they can apply for lawful permanent residence.²⁵⁹ Derivatives are also eligible for the same benefits.²⁶⁰

TIP: Applying for lawful permanent residence after obtaining the U visa will likely be similar to the process described above in the SIJS section for seeking an adjustment of status using Form I-485. See [Section III.D.](#) But keep in mind that inadmissibility bars and application filing locations can vary if you are seeking adjustment of status based on a U visa instead of SIJS. You will need to conduct additional research once you reach this stage.

T Nonimmigrant Status (T Visas)

Generally, T visas are available for victims/survivors of severe forms of sex or labor trafficking. If you think your client is eligible to file for a T visa, this is something to explore more closely. This Guide only provides an overview to get you started.

ELIGIBILITY REQUIREMENTS

Notably, in April 2024, DHS published a [final rule](#) "Classification for Victims of Severe Forms of Trafficking in Persons, Eligibility for 'T' Nonimmigrant Status" modifying several regulations applying to T visas.²⁶¹ The rule went into effect on August 28, 2024 and applies to applications pending at that time, and those filed in the future.

Under [8 CFR § 214.204\(l\)](#), USCIS specifies that T visa applicants must establish their eligibility for T nonimmigrant status by a "preponderance of the evidence" standard, which means that T visa applicants must prove that the facts in the T visa application are more likely than not to be true. USCIS will consider the totality of evidence submitted, any other evidence available to USCIS, and they may investigate aspects of the application.²⁶²

²⁵⁷ USCIS Policy Manual, Vol. 3, Pt. C, Ch. 4.

²⁵⁸ 8 C.F.R. § 214.14(c)(6)-(7), (g)(1).

²⁵⁹ INA § 245(m); 8 U.S.C. § 1255(m); 8 C.F.R. § 245.24.

²⁶⁰ 8 C.F.R. §§ 214.14(f), 245.24(g). See information *supra* note 253.

²⁶¹ See [2024 Final Rule for T Nonimmigrant Status](#), CILA (Sept. 3, 2024), <https://cilacademy.org/2024/09/03/2024-final-rule-for-t-nonimmigrant-status/>. Advisory: [Overview of the 2024 T Visa Final Rule](#), CAST (Sept. 19, 2024), <https://castla.app.box.com/v/2024TVisaRegsOverview>.

²⁶² 8 CFR § 214.204(l).

As an overview, to be eligible for a T visa, an individual must:²⁶³

- Be a victim of a severe form of trafficking in persons
- Be physically present in the United States on account of trafficking
 - **TIP:** Any exit from the United States after trafficking may affect eligibility.
- Have complied with any reasonable request for assistance in the investigation of trafficking from law enforcement or meets an exception, such as being less than 18 years of age at the time of at least one act of trafficking
 - **TIP:** Victims may not have reported the trafficking. You should decide on a case-by-case whether to help them do so. Places to consider making a report include, for example, a Human Trafficking Task Force, Regional FBI, Department of Labor, or local law enforcement. Reporting is generally not required for a child under 18 years of age. Considerations can include the possibility of having more derivatives, as explained below. Also having law enforcement complete [Supplement B to Form I-914, Application for T Nonimmigrant Status](#) can help you assess the strength of the case.
- Demonstrate that they would suffer extreme hardship involving unusual and severe harm upon removal
- Be admissible or eligible for a waiver

T Visa Key Sources of Law

- INA § 101(a)(15)(T); 8 U.S.C. § 1101(a)(15)(T)
- INA § 214(o); 8 U.S.C. § 1184(o)
- INA § 212(d)(13); 8 U.S.C. § 1182(d)(13) (inadmissibility)
- INA § 245(l); 8 U.S.C. § 1255(l) (adjustment)
- 8 C.F.R. § 212.16
- 8 C.F.R. § 214.11
- 8 C.F.R. § 245.23 (adjustment)
- 8 C.F.R. § 1214.2
- 28 C.F.R. § 1100.35
- Victims of Trafficking and Violence Protection Act of 2000 (TVPA) and reauthorizations
- Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005) and reauthorization

²⁶³ INA § 101(a)(15)(T); 8 U.S.C. § 1101(a)(15)(T); 8 C.F.R. § 214.202. USCIS Policy Manual, Vol. 3, Pt. B, Ch. 2.

Severe forms of trafficking can either be sex trafficking or labor trafficking.

Sex Trafficking: “[S]ex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age.”²⁶⁴ When working with children under age 18 who have been sex trafficked, you do not have to show force, fraud, or coercion, just that the sex act occurred. Furthermore, “[t]he term ‘sex trafficking’ means the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act.”²⁶⁵

Labor Trafficking: Can be “recruitment, harboring, transportation, provision or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage or slavery.”²⁶⁶

Child Labor

Unaccompanied children can be especially vulnerable to child labor exploitation in the United States. The New York Times issued an [article](#) in February 2023 highlighting these issues. Practitioners should be aware of these problems and check in with your client regularly.

KIND issued a report in March 2023 with [Five Recommendations for Protecting Unaccompanied Children from Labor Exploitation](#).

Common forms of severe trafficking that affect youth include: sex trafficking (18 U.S.C. § 1591), forced labor (18 U.S.C. § 1589), and involuntary servitude (18 U.S.C. § 1592).

FILING THE T VISA APPLICATION

- **Forms:** You must provide evidence that your client meets all of the eligibility requirements for a T visa.²⁶⁷ [Form I-914, Application for T Nonimmigrant Status](#) is the primary form used for this application. An applicant is also required to submit a detailed, signed personal statement describing the circumstances of the trafficking and their victimization. The regulations at [8 C.F.R. § 214.204\(c\)](#) elaborate on what information should be included in the personal statement.

If applicable, you may also file [Form I-914, Supplement B, Declaration for Trafficking Victim](#), which is completed by a federal, state, tribal, or local law enforcement agency, or other evidence can also suffice to support that you have complied with any reasonable request to assist law enforcement.²⁶⁸ The [USCIS website](#) provides alternative example evidence that can be used, and USCIS has a [T Visa Law Enforcement Resource Guide](#). If your client has inadmissibility grounds at issue, you should also file [Form I-192, Application for Advance Permission to Enter as a Nonimmigrant](#) to apply to waive those grounds of inadmissibility.

²⁶⁴ 22 U.S.C. § 7102(11)(A). 8 C.F.R. § 214.201.

²⁶⁵ 22 U.S.C. § 7102(12). 8 C.F.R. § 214.201.

²⁶⁶ 22 U.S.C. § 7102(11)(B). 8 C.F.R. § 214.201.

²⁶⁷ 8 C.F.R. § 214.204-209. You might want to check out the USCIS informational checklist of required initial evidence found on USCIS’s webpage. *See I-914, Application for T Nonimmigrant Status*, USCIS, <https://www.uscis.gov/i-914> (last reviewed/updated Mar. 28, 2025).

²⁶⁸ Unlike the certification required in U visa cases, this form is not required in order to secure a T visa, though it can be very helpful. For example, if your client reports to a law enforcement agency, but the agency declines to investigate, you can include evidence of the report (email, etc.) without the Form I-914, Supplement B declaration. According to [8 C.F.R. § 214.204\(f\)](#), “[a]ll evidence demonstrating cooperation with law enforcement will be considered under the any credible evidence standard.”

- **Derivatives:** A principal petitioner who is under age 21 may petition for a spouse,²⁶⁹ children, parents, and unmarried siblings under age 18.²⁷⁰ A principal petitioner who is age 21 or older may petition for a spouse and children.²⁷¹ Additionally, there are more categories for derivatives of a T visa if there is a present danger of retaliation because of the principal applicant’s “escape from the severe form of trafficking or cooperation with law enforcement.”²⁷² If your client has any derivatives, you need to file [Form I-914, Supplement A, Application for Derivative T Nonimmigrant Status](#) for each qualifying family member.
- **Wait Times:** The number of T visas that can be issued each year for principal applicants is capped at 5,000.²⁷³ USCIS data shows that over 20,000 applications were pending for victims of trafficking at the end of FY 2024.²⁷⁴ The USCIS website also shows [processing times](#) for T visa applicants.
- **Bona Fide Determination (BFD):** With the 2024 changes to the T visa regulations, USCIS created a process to grant bona fide determinations (similar to the U visa BFD process) for T visa applicants. The [USCIS Policy Manual](#) explains the BFD process for T visa applicants in Vol. 3, Pt. B, Ch. 6. For T visa applications submitted on August 28, 2024 and after, USCIS will perform an initial review to see if the application is bona fide—that it was properly filed and completed, accompanied with a signed personal statement, and that a completed background check of the applicant does not present national security concerns. USCIS may issue a discretionary BFD and grant deferred action and a BFD employment authorization document (EAD). If USCIS does not find the application to be bona fide upon the initial review, then USCIS will conduct a secondary review.²⁷⁵ If the application satisfies each eligibility requirement, then it is approved; though if the cap has been reached, then the application will receive a BFD.²⁷⁶ USCIS recommends that applicants file an application for an EAD at the same time as the Form I-914 for efficient processing of a potential BFD-based EAD.²⁷⁷

OFFICE ON TRAFFICKING IN PERSONS (OTIP) LETTERS

If you see evidence that the youth has an Office on Trafficking in Persons (OTIP) Eligibility Letter, this does not mean the child has a T visa or is necessarily eligible for a T visa. A child can receive an OTIP letter even if the child was trafficked outside the United States; whereas, a T visa requires trafficking that occurred in the United States, or that the applicant is present in the United States on account of the trafficking. Having an OTIP letter can prove beneficial for a child because it can be used as evidence of T visa eligibility, and it qualifies the child for certain benefits. Check out CILA’s blog post on [What is an OTIP Letter and How Can Advocates Utilize It to Help Unaccompanied Children?](#) and CILA’s recorded presentation, [OTIP Requests and Violations of Unaccompanied Children’s Rights](#), for additional information.²⁷⁸

²⁶⁹ See information *supra* note 249. USCIS Policy Manual, Vol. 3, Pt. B, Ch. 4, fn 12-13.

²⁷⁰ INA § 101(a)(15)(T)(ii)(I); 8 U.S.C. § 1101(a)(15)(T)(ii)(I). 8 C.F.R. § 214.211(a)(2). USCIS Policy Manual, Vol. 3, Pt. B, Ch. 4.

²⁷¹ INA § 101(a)(15)(T)(ii)(II); 8 U.S.C. § 1101(a)(15)(T)(ii)(II). 8 C.F.R. § 214.211(a)(1). USCIS Policy Manual, Vol. 3, Pt. B, Ch. 4.

²⁷² INA § 101(a)(15)(T)(ii)(III); 8 U.S.C. § 1101(a)(15)(T)(ii)(III); 8 C.F.R. § 214.211(a)(3). USCIS Policy Manual, Vol. 3, Pt. B, Ch. 4.

²⁷³ INA § 214(o)(2); 8 U.S.C. § 1184(o)(2).

²⁷⁴ *Number of Form I-914, Application for T Nonimmigrant Status by Fiscal Year, Quarter, and Case Status Fiscal Years 2008-2025*, USCIS, https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.uscis.gov%2Fsites%2Fdefault%2Ffiles%2Fdocument%2Fdata%2Fi914_visastatistics_fy2025_q2.xlsx&wdOrigin=BROWSELINK.

²⁷⁵ 8 C.F.R. § 214.205. USCIS Policy Manual, Vol. 3, Pt. B, Ch. 6.

²⁷⁶ *Id.*

²⁷⁷ USCIS Policy Manual, Vol. 3, Pt. B, Ch. 11.

²⁷⁸ Learn more about Office on Trafficking in Persons (OTIP) eligibility letters. See *Child Eligibility Toolkit*, HHS OTIP, <https://acf.gov/otip/services/requests-assistance/child-eligibility-toolkit> (Mar. 27, 2025).

CLIENT IN REMOVAL PROCEEDINGS AND HAS PENDING T VISA

If your client is in removal proceedings and has a pending T visa application, consider seeking to delay or close the proceedings while USCIS adjudicates the application. The [USCIS Policy Manual](#) provides some information related to T visa applicants in removal proceedings in Vol. 3, Pt. B, Ch. 10. The best strategy will depend on the specific facts involved, the immigration judge (IJ), and the government attorney in your case. There are procedural tools to consider when representing someone in immigration court. See [Section IV.C.](#) and refer to CILA's resource [Procedural Options in Removal Proceedings for Youth](#) for more information.

BENEFITS OF AN APPROVED T VISA APPLICATION

Individuals who have received a T visa approval are eligible for lawful status and employment authorization for four years.²⁷⁹ For principal applicants, once the Form I-914 is approved, the EAD is automatically given without the need to file [Form I-765, Application for Employment Authorization](#), but derivatives must file Form I-765 to get work authorization.²⁸⁰ After three years, the principal and any derivatives can apply for adjustment of status to get a green card.²⁸¹ T visa recipients are also eligible for some public benefits.²⁸²

Can Filing a T Visa Application Lead to Removal Proceedings?

One of the factors to consider when assessing types of relief is whether applying can increase the risk of the client being placed in removal proceedings. For any USCIS request, one risk to consider is whether the client will be placed in removal proceedings if the application/petition is denied. Review USCIS's [policy guidance on issuance of Notices to Appear \(NTAs\)](#) from February 2025. The memo provides guidance and gives USCIS some discretion. Notably, the memo states, "USCIS will issue an NTA where, upon issuance of an unfavorable decision on a benefit request, the [noncitizen] is not lawfully present in the United States."

²⁷⁹ 8 C.F.R. § 214.203. [USCIS Policy Manual](#), Vol. 3, Pt. B, Ch. 10, 11.

²⁸⁰ [USCIS Policy Manual](#), Vol. 3, Pt. B, Ch. 11. See [Section IV.D.](#) for more information on how to file the I-765.

²⁸¹ 8 C.F.R. § 245.23.

²⁸² [USCIS Policy Manual](#), Vol. 3, Pt. B, Ch. 11. See *Victims of Human Trafficking: T Nonimmigrant Status*, USCIS, <https://www.uscis.gov/humanitarian/victims-human-trafficking-and-other-crimes/> (last reviewed/updated May 16, 2025).

Links to Help You with YOUR CLIENTS' U AND T VISA CASES

- Check out CILA's 101 [webinar](#): *Options for Child Survivors of Crimes, Including Trafficking* (39 minutes).
- Review CILA's blog post, [2024 Final Rule for T Nonimmigrant Status](#), September 2024.
- Watch the [presentation](#), *Trafficked Teens: Looking Beyond SIJS and Asylum for Unaccompanied Children*, from CILA's 7th Annual Champions for Immigrant Youth Symposium (about 1 hour), May 2025.
- View CILA's [webinar](#), *Immigrant Survivor Relief for Unaccompanied Children* (1 hour, 28 minutes), August 2023.
- Review CILA's [presentation](#), *OTIP Requests and Violations of Unaccompanied Children's Rights*, from a Boot Camp training (about 45 minutes), October 2025.
- Read ImportaMi's article [Human Trafficking: How to identify it and action steps](#), May 2025.
- Review ASISTA, Alliance for Immigrant Survivors, and AILA's [Practice Alert: New ICE Guidance on Current or Potential Victim-Based Benefits](#), February 2025.
- Review NIJC's [Representing Immigrant Survivors of Human Trafficking: T Nonimmigrant Status \("T Visa"\) Training Manual](#), October 2024.
- Consult ILRC's practice advisory [Using Indirect & Bystander Victim Theories to Expand U Visa Eligibility for Families](#), Ariel Brown, Kate Mahoney, January 2025 and ILRC's practice advisory [U Visa Derivatives Age-Out](#), Angel Graf and Alison Kamhi, June 2021.
- Read CILA and NIPNLG's [Practice Advisory: Understanding the SIJS Parental Benefit Prohibition: What Advocates and Clients Need to Know](#), October 2024.
- Check out CILA's ongoing blog series on [Supporting Our Clients in the Interim by Rescreening for Relief](#) for more information about U and T visas as well as advice for how to evaluate changed circumstances and assess eligibility, June, August, and December 2023.
- ASISTA has a [resource library](#) with information about U and T visas amongst other topics and offers [technical assistance](#) to members with case-specific questions. For example, read ASISTA's [Practice Advisory: Addressing Late-Breaking Inadmissibility Grounds for U Visa Beneficiaries](#), August 2024 and ASISTA and NCVLI's [Practice Advisory: Opposing defendants' requests for U and T filings in criminal proceedings](#), October 2024.
- The Coalition to Abolish Slavery and Trafficking (CAST) provides a host of resources on their [website](#) regarding [T visas and T adjustments](#) including trainings and written materials including the practice advisory [Physical Presence Eligibility Requirement for T-1 Visa Applicants](#), December 2024 and [T Derivatives & Age-Out Protections](#), August 2025.
- Watch Project TRUST's recorded webinar on [Enhancing Trauma-Informed Approaches: Building Trauma-Conscious and Person-Centered Practices in Anti-Trafficking Work](#).
- Check out the DOJ [webpage](#) regarding [Human Trafficking Key Legislation](#) and DOS's [webpage](#) [International and Domestic Law](#) from the Office to Monitor and Combat Trafficking in Persons.
- Review CILA's resource [Tips for Working with Migrant Children and Trauma-Informed Lawyering](#), October 2023.
- Review CILA's resource, [A Toolkit for Navigating Difficult Conversations with Child Clients: Guidance and Examples](#), November 2024, especially the section on how to approach having conversations related to sex and labor trafficking.

F. Family-Based Cases and VAWA Self-Petitions

Family-Based Cases

Family-based immigration is the primary form of immigration in the United States.²⁸³ United States citizens²⁸⁴ and lawful permanent residents²⁸⁵ can petition for certain family members to gain legal status in the United States and become lawful permanent residents. When reviewing family-based immigration options, they can be broken down into immediate relatives and family preference categories, which are reviewed further below. It is important to screen your client to see if they have a family-based option to get a green card. This Guide provides a general overview of this potential option to get you started.

Family-Based Cases Key Sources of Law

- INA § 101(b); 8 U.S.C. § 1101(b) (definition of “child”)
- INA § 201; 8 U.S.C. § 1151 (worldwide level of immigration)
- INA § 203(a); 8 U.S.C. § 1153(a) (preference allocation for family-sponsored immigrants)
- INA § 212(a); 8 U.S.C. § 1182(a) (classes of individuals ineligible for visas or admission)
- INA § 245; 8 U.S.C. § 1255 (adjustment of status)
- 8 C.F.R. § 204 Subpart A (immigrant visa petitions)
- 8 C.F.R. Part 245 (adjustment of status)
- USCIS Policy Manual, Volumes 7 - Adjustment of Status, 8 - Admissibility, 9 - Waivers and Other Forms of Relief

WHO QUALIFIES FOR A FAMILY-BASED VISA?

Immediate Relatives: There are an unlimited number of visas available for immediate relatives, so immediate relatives typically do not have to wait for a visa (except for processing times).²⁸⁶

A U.S. citizen can petition for the following immediate relatives:

- A spouse²⁸⁷
- Unmarried children under age 21 of U.S. citizen
- Parents of U.S. citizen, if the U.S. citizen petitioner is at least 21 years old

Family Preference Categories: The United States gives preference to certain family relationship categories²⁸⁸ over others, ranking them F1-F4, with F1 being the top priority.

- F1: Unmarried sons and daughters (over age 21) of U.S. citizens

²⁸³ See *How the United States Immigration System Works*, AIC (June 24, 2024), <https://www.americanimmigrationcouncil.org/fact-sheet/how-united-states-immigration-system-works-fact-sheet/>.

²⁸⁴ To learn more about family-based immigration options for United States citizens, view USCIS's webpage on the topic. See *Family of U.S. Citizens*, USCIS, <https://www.uscis.gov/family/family-us-citizens> (last reviewed/updated Mar. 23, 2018).

²⁸⁵ To learn more about family-based immigration options for lawful permanent residents, view USCIS's webpage on the issue. See *Family of Green Card Holders (Permanent Residents)*, USCIS, <https://www.uscis.gov/family/family-green-card-holders-permanent-residents> (last reviewed/updated July 14, 2015).

²⁸⁶ INA § 201(b)(2)(A)(i); 8 U.S.C. § 1151(b)(2)(A)(i).

²⁸⁷ 8 C.F.R. § 204.2(a)(1).

²⁸⁸ INA § 203(a); 8 U.S.C. § 1153(a).

- F2: A) Spouses²⁸⁹ and minor children of lawful permanent residents
B) Unmarried sons and daughters over age 21 of lawful permanent residents
- F3: Married sons and daughters of U.S. citizens and their spouses and minor children
- F4: Brothers and sisters of U.S. citizens and their spouses and minor children, if the U.S. citizen petitioner is at least 21 years old

As you may be able to tell from the lists above, neither U.S. citizens nor lawful permanent residents can petition for grandparents/grandchildren, aunts/uncles, in-laws, or cousins. Lawful permanent residents cannot petition for their married children, parents, or siblings.

TIP: It is important to screen your client for a potential family-based immigration option:

- Has a mother or father who became a lawful permanent resident or U.S. citizen
- Has a step-parent²⁹⁰ who is a lawful permanent resident or U.S. citizen
- Married a U.S. citizen²⁹¹ or lawful permanent resident
- Has a U.S. citizen sibling (F4)

FILING A FAMILY-BASED PETITION FOR A VISA

- **Wait Times:** The total number of family-based preference visas is capped at 480,000 each fiscal year.²⁹² There are limits per preference category,²⁹³ and each country can have roughly 7% of the number of visas each year.²⁹⁴ The number of family-based visa petitions filed per year exceeds the cap, which creates waitlists for a visa and those in the least preferred categories and from certain countries like Mexico may have even longer waits.²⁹⁵ The Department of State (DOS) has at times exercised its [discretion](#) to pause or halt the issuance of visas from certain countries.
- **Snapshot of the Process:**
 - **Step 1:** Submit [Form I-130, Petition for Alien Relative](#) to USCIS²⁹⁶ to petition for a visa for a family member. The form can be submitted through online filing with USCIS. Submitting the form places the beneficiary into their eligibility group of either immediate relative or family preference category. Once approved, those placed in a family preference category are placed on a waitlist and given a priority date, the date the petition was received by USCIS. If they are an immediate relative, the applicant can go to Step 2 immediately after receiving an approval of the I-130. If they are not an immediate relative, there will be a waiting period. The DOS issues a Visa Bulletin²⁹⁷ each month, which is an updated waitlist based on priority date per country. See [Section III.D.](#) of this Guide for discussion and background information on the Visa Bulletin.

²⁸⁹ 8 C.F.R. § 204.2(a)(1).

²⁹⁰ According to INA § 101(b)(1)(B); 8 U.S.C. § 1101(b)(1)(B) a child can be a stepchild “whether or not born out of wedlock, provided the child had not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred.”

²⁹¹ Note that, for SIJS eligibility, the petitioner must be unmarried at the time that the SIJS petition is filed and at the time that USCIS makes a decision on the SIJS petition. See [Section III.D.](#)

²⁹² INA § 201(c)(1)(A)(i); 8 U.S.C. § 1151(c)(1)(A)(i).

²⁹³ INA § 203(a); 8 U.S.C. § 1153(a).

²⁹⁴ INA § 202(a)(2); 8 U.S.C. § 1152(a)(2).

²⁹⁵ See Charles Wheeler, *Backlogs in Family-Based Immigration: Shedding Light on the Numbers*, CLINIC (Mar. 1, 2019), <https://cliniclegal.org/resources/family-based-immigrant-law/backlogs-family-based-immigration-shedding-light-numbers>; David J. Bier, *8.3 Million Relatives of U.S. Citizens & Legal Residents Awaited Green Cards in 2022*, CATO Institute (May 17, 2023), <https://www.cato.org/blog/83-million-relatives-us-citizens-legal-residents-await-green-cards>.

²⁹⁶ To find out more information regarding the process of filing a Form I-130 with USCIS, you may want to read USCIS’s webpage on the topic. See *I-130, Petition for Alien Relative*, USCIS, <https://www.uscis.gov/i-130> (last reviewed/updated Sept. 24, 2025). See also *Immigrant Visa Process*, DOS, <https://travel.state.gov/content/travel/en/us-visas/immigrate/the-immigrant-visa-process/step-1-submit-a-petition.html> (last visited Oct. 9, 2025).

²⁹⁷ The DOS Visa Bulletin is issued each month on DOS’s website. *The Visa Bulletin*, DOS, <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin.html> (last visited Oct. 9, 2025).

- Step 2: To get a visa, the individual can file [Form I-485, Application to Register Permanent Residence or Adjust Status](#) to USCIS²⁹⁸ or consular process by going to the United States Consulate's office in their home country to apply for a visa using [Form DS-260, Immigrant Visa Electronic Application](#).²⁹⁹ When determining whether an individual can adjust status by applying with USCIS or if they will need to consular process, the answer often stems on where the individual is located, when they filed their I-130 petition, whether they entered with inspection or not, their eligibility group, and whether they have any other inadmissibility issues or not.

- **Potential Need for a Waiver of Inadmissibility:**

- Grounds of Inadmissibility: There are many grounds of inadmissibility including unlawful presence, criminal issues, public health issues, misrepresentation/fraud, smuggling, prior removal orders, etc. which must be explored when your client is applying for lawful permanent residence. Drug offenses, for instance, are generally not waivable except if the offense was for marijuana, and there was only a single offense for simple possession of 30 grams or less.³⁰⁰
- Unlawful Presence: It is important to know how your client entered the United States (via a port of entry or between ports of entry) and the number of entries your client has had. Unlawful presence is not accrued until after reaching the age of 18.
 - * If a child unlawfully entered the country one time, then the child may be able to consular process. A waiver is required if the youth accrued unlawful presence and/or is issued a removal order.
 - * In June 2022, USCIS issued policy guidance regarding inadmissibility under INA § 212(a)(9)(B) and what happens if a noncitizen returns to the United States during the statutory 3-year or 10-year period after the noncitizen left or was removed from the United States. Under this [Policy Alert \(PA-2022-15\)](#), a noncitizen seeking admission to the United States more than 3 or 10 years after the departure or removal is not inadmissible under INA § 212(a)(9)(B). The USCIS Policy Alert further clarifies that “a noncitizen’s location during the statutory 3-year or 10-year period and the noncitizen’s manner of return to the United States during the statutory 3-year or 10-year period are irrelevant for purposes of determining inadmissibility under INA 212(a)(9)(B).” This means that even if the noncitizen came back to the United States, with or without authorization, during the statutory 3-year or 10-year period, they are still not inadmissible under INA § 212(a)(9)(B). Since there are nuances involved, consult the policy alert and the [USCIS Policy Manual](#) for all details when doing your analysis. If pursuing relief before EOIR, the BIA decision [Matter of Duarte-Gonzalez](#), 28 I&N Dec. 688 (BIA 2023) is consistent with USCIS on this issue, holding that the 3- and 10-year bars for unlawful presence continue to run while a noncitizen is in the United States.

²⁹⁸ To find out more information regarding the process before USCIS, you may want to read USCIS's webpage on the issue. See *Green Card for Family Preference Immigrants*, USCIS, <https://www.uscis.gov/greencard/family-preference> (last reviewed/updated July 8, 2025).

²⁹⁹ To find out more information regarding consular processing, visit the DOS's webpage on the issue. See *Immigrant Visa Process*, DOS, <https://travel.state.gov/content/travel/en/us-visas/immigrate/the-immigrant-visa-process/step-1-submit-a-petition/step-2-begin-nvc-processing.html> (last visited Oct. 9, 2025).

³⁰⁰ See also Kathy Brady, Zachary Nightingale, Matt Adams, *Immigrants and Marijuana*, ILRC (May 21, 2021), <https://www.ilrc.org/immigrants-and-marijuana>.

* If a child entered the United States more than one time, you must then determine how long the child stayed in the United States after entering. If the child entered the country without documentation, stayed longer than one year, and then left the country and re-entered, the child will be subject to the “permanent bar.”³⁰¹ It is commonly referred to as the “permanent bar” because it cannot be waived, but the bar can be overcome by staying outside of the United States for ten years and then applying for permission to re-enter the United States.

- **Types of Waivers:** Sometimes an individual can file a waiver to waive a ground of inadmissibility. Some of the forms used to file for a waiver include [Form I-601A](#), *Application for Provisional Unlawful Presence Waiver*; [Form I-601](#), *Application for Waiver of Grounds of Inadmissibility*; and [Form I-212](#), *Application for Permission to Reapply for Admission into the United States After Deportation or Removal* depending on the circumstance. The chart on page 105 gives a quick breakdown of instances when you would use each of these particular forms. You must consult each waiver form’s instructions and guidance to determine which form(s) is required in your case, and how and when to file each.

- **TIP:** Many young people who arrive unaccompanied enter the United States without inspection and thus will face barriers to adjusting their status even if they have family members in the United States with legal permanent residence or citizenship. While they may have a relative who can petition and further sponsor them in a family-based case, the client must depart the United States to obtain an immigrant visa from the embassy. Those who are consular processing will travel to their home country to obtain the immigrant visa, though in certain cases, an individual can seek permission from the DOS to travel to a third country.

Importantly, if a youth has accrued unlawful presence and then seeks to depart the United States without an approved provisional waiver of unlawful presence (if that is the only relevant inadmissibility ground present in their case), the embassy will refuse to issue the immigrant visa because of the inadmissibility, and the client will be unable to lawfully return to the United States until they obtain a waiver of the unlawful presence. Attorneys can file the [Form I-601A](#), *Application for Provisional Unlawful Presence Waiver* upon approval of the I-130 petition and proceed with consular processing after USCIS approves the I-601A, so that the unlawful presence is waived before the client departs the United States, and the client can be admitted to the United States with their immigrant visa. Notably, if a client is in removal proceedings, they are ineligible to file a I-601A unless the proceedings are terminated or administratively closed.

When unlawful presence has not been waived but the client departed, the embassy flags unlawful presence as an inadmissibility ground needing a waiver. The client can seek a waiver of the unlawful presence from abroad, but they will have to wait for full adjudication of the waiver before trying to obtain an immigrant visa again. With this in mind, consular processing comes with many nuances and challenges, which is why it is best practice to simultaneously pursue other forms of relief if the client is eligible. Attorneys must also determine the effect of going abroad on any other forms of relief.

301 INA § 212(a)(9)(c); 8 U.S.C. § 1182(a).

FORM I-601A, APPLICATION FOR PROVISIONAL UNLAWFUL PRESENCE WAIVER	FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF INADMISSIBILITY (EXAMPLE LIST) ³⁰²	FORM I-212, APPLICATION FOR PERMISSION TO REAP- PLY FOR ADMISSION INTO THE UNITED STATES AFTER DEPORTATION OR REMOVAL
Previous unlawful presence INA § 212(a)(9)(B) ³⁰³ <u>ONLY</u>	Previous unlawful presence INA § 212(a)(9)(B)	Previously removed INA § 212(a)(9)(A)
	Immigration Fraud and misrepresentation INA § 212(a)(6)(c)	Unlawfully present after previous immigration violations INA § 212(a)(9)(C)
	Certain criminal grounds INA § 212(a)(2)	
	Health-related grounds INA § 212(a)(1)	
	Immigrant membership in totalitarian party INA § 212(a)(3)	
	Smuggling INA § 212(a)(6)(E)	
	Subject to civil penalty INA § 212(a)(6)(F)	

POTENTIAL RISK FOR NOTICE TO APPEAR

Be aware that in February 2025, USCIS released a Policy Memorandum “[Issuance of Notices to Appear \(NTAs\) in Cases Involving Inadmissible and Deportable Aliens](#),” which can potentially increase the risk of someone being placed in removal proceedings after filing for relief affirmatively with USCIS if that relief is denied. This USCIS policy is broad and applies to many circumstances (not just family-based petitions). USCIS also updated its policy on family-based immigration in August 2025 to increase their ability to screen and vet family-based claims as well as to modify other requirements.³⁰⁴ The [USCIS Policy Manual](#) Vol. 6, Pt. B, Ch. 5 states:

If USCIS determines the [noncitizen] beneficiary is removeable and amenable to removal from the United States, USCIS may issue a Notice to Appear (NTA) placing the beneficiary in removal proceedings. Petitioners and [noncitizen] beneficiaries should be aware that a family-based petition accords no immigration status nor does it bar removal.

³⁰² See the Form I-601 instructions for further guidance on use of the I-601 to waive inadmissibility grounds. *I-601 Application for Waiver of Grounds of Inadmissibility*, USCIS, <https://www.uscis.gov/i-601> (last reviewed/edited Sept. 24, 2025).

³⁰³ USCIS issued [Policy Guidance](#) on June 24, 2022, regarding inadmissibility under INA § 212(a)(9)(B). The policy alert on this issue states, “Under this Policy Guidance, a noncitizen who again seeks admission to the United States more than 3 or 10 years after the relevant departure or removal is not inadmissible under INA 212(a)(9)(B), even if the noncitizen returned to the United States, with or without authorization, during the statutory 3-year or 10-year period.” See [USCIS Policy Manual](#), Vol. 8, Pt. O, Ch. 6.

³⁰⁴ USCIS, *USCIS Issues Guidance Regarding Family-Based Immigration Policy* (Aug. 1, 2025), <https://www.uscis.gov/newsroom/alerts/uscis-issues-guidance-regarding-family-based-immigration-policy>.

CLIENT IN REMOVAL PROCEEDINGS AND HAS PENDING FAMILY-BASED VISA PETITION

If your client is in removal proceedings and has a pending family-based visa petition, you may want to file a motion to seek additional time for your client to wait for a decision on their petition. See [Section IV.C.](#) for more information regarding common motions in immigration court. Also, review CILA's resource [Procedural Options in Removal Proceedings for Youth](#).

Moreover, it is important to know there are instances when your client can seek adjustment of status before the court, and other times when the client does not qualify for adjustment of status and must instead go through consular processing.

TIP: If your client will need to consular process but is currently in removal proceedings and has no other legal claim for relief, your client may want to consider the option of voluntary departure. It is important for your client to resolve their removal proceedings before leaving the country to consular process. Voluntary departure³⁰⁵ can be a tricky subject, so it is important to study this option and review it carefully with your client, but if your client follows the voluntary departure instructions, this can be a better option than getting a removal order—which will require a waiver of inadmissibility if they plan to consular process for their family-based immigrant visa. This will be up to your client.

Violence Against Women Act Self-Petitions

The Violence Against Women Act (VAWA)³⁰⁶ provides a way for an abused spouse, child, or parent to self-petition for legal status when they have suffered abuse by a U.S. citizen or lawful permanent resident family member. Despite the name, protection is available to both females and males and to adults and children. A child can self-petition directly or be a derivative on an abused parent's petition.

According to [Esperanza United](#), an organization dedicated to working with Latin@s in the United States and to end domestic violence, there are additional tactics abusive partners sometimes take to assert control over their immigrant partners, including isolation, threats, intimidation, manipulation regarding getting immigration status, economic abuse, and threatening the potential loss of their children if authorities are called. Due to this particular susceptibility for abuse, the option to self-petition through VAWA is critical. This Guide provides a general overview regarding VAWA self-petitions to get you started if this is an option for your client.

VAWA Self-Petitions Key Sources of Law

- INA § 101(a)(51); 8 U.S.C. § 1101(a)(51)
- INA § 204(a); 8 U.S.C. § 1154(a)
- INA § 240A(b)(2); 8 U.S.C. § 1229b(b)(2) (cancellation of removal)
- 8 C.F.R. § 204.1
- 8 C.F.R. § 204.2
- [Violent Crime Control and Law Enforcement Act of 1994 \(VAWA\)](#) and reauthorizations
- [USCIS Policy Manual](#), Volume 3 - Humanitarian Protection and Parole

³⁰⁵ See Immigration Equality, *Asylum Manual*, <https://immigrationequality.org/asylum/asylum-manual/immigration-basics-voluntary-departure/> (last visited Oct. 9, 2025). See also *Practice Advisory Voluntary Departure: When the Consequences of Failing to Depart Should and Should Not Apply*, AIC (Dec. 21, 2017), <https://www.americanimmigrationcouncil.org/practice-advisory/voluntary-departure-when-the-consequences-of-failing-to-depart-should-and-should-not-apply/>.

³⁰⁶ To learn more about the relevant legislation and regulations relating to VAWA, review the DOJ Office on Violence Against Women's *Legislation and Regulations* webpage (last updated Oct. 20, 2022).

VAWA ELIGIBILITY REQUIREMENTS

An individual can self-petition if they are the victim of battery or extreme cruelty committed by:³⁰⁷

- A U.S. citizen or lawful permanent resident spouse or former spouse
- A U.S. citizen or lawful permanent resident parent
- A U.S. citizen son or daughter

Therefore, a child (unmarried and under age 21)³⁰⁸ can be a direct self-petitioner or a derivative on a parent's VAWA petition.

In addition to a qualifying familial relationship (as listed above), other eligibility requirements for self-petitioners include:³⁰⁹

- Suffered battery or extreme cruelty by U.S. citizen or lawful permanent resident family member (one of the qualifying familial relationships listed above)
 - Additionally, parents can file if their U.S. citizen or lawful permanent resident spouse abused their child.
- Resides (or resided) with the abusive individual³¹⁰
- If the child is petitioning based on abuse of a parent, the child must reside in the United States.
- If familial relationship is based on marriage, the marriage must have been entered in good faith and not solely for immigration purposes.
- Individual must be person of good moral character (if a child is self-petitioning, this requirement only applies to children over age 14 because younger children are presumed to be persons of good moral character).

VAWA self-petitioners may be able to seek waiver of certain inadmissibility grounds. There are also specific inadmissibility exceptions for VAWA self-petitioners, including being present without admission or parole (INA § 212(a)(6)(A)(i)),³¹¹ and public charge (INA § 212(a)(4)(E)(i)),³¹² where a waiver is not necessary.

FILING THE VAWA SELF-PETITION

- **Confidentiality:** Congress has created some important confidentiality protections for individuals with pending or approved U, T, and VAWA self-petitions to protect individuals.³¹³ This is important for safety reasons. See [Section II.B](#).
- **Necessary Forms:** [Form I-360, Petition for Amerasian, Widow\(er\), or Special Immigrant](#) is used to file for VAWA.³¹⁴ If adjustment-eligible and the abuser is a U.S. citizen, then the petitioner can concurrently file [Form I-485, Application to Register Permanent Residence or Adjust Status](#) for adjustment of status. If the abuser is a lawful permanent resident, then the individual will have to wait for their

307 INA § 204(a); 8 U.S.C. § 1154(a). See also USCIS, *Questions and Answers: Battered Spouses, Children and Parents under the Violence Against Women Act (VAWA)* (Feb. 10, 2022), <https://www.uscis.gov/humanitarian/abused-spouses-children-and-parents/questions-and-answers-abused-spouses-children-and-parents-under-the-violence-against-women-act-va-wa>.

308 Children can also file if they are between the ages of 21-24 if they can demonstrate that abuse was the main reason for delay in filing the petition. See INA § 204(a)(1)(D)(v); 8 U.S.C. § 1154(a)(1)(D)(v).

309 INA § 204(a); 8 U.S.C. § 1154(a); 8 C.F.R. § 204.2.

310 In 2022, USCIS updated the Policy Manual to change the interpretation of the requirement for shared residence with the abusive individual. USCIS updated its interpretation of the statute to require self-petitioners to demonstrate, when filing the self-petition, that they currently reside or have resided with the abuser at any time in the past. Read this [USCIS Policy Alert \[PA-2022-09\]](#) to learn more about the VAWA update to the USCIS Policy Manual.

311 INA § 212(a)(6); 8 U.S.C. § 1182(a)(6).

312 INA § 212(a)(4); 8 U.S.C. § 1182(a)(4).

313 INA § 239(e); 8 U.S.C. § 1229(e); 8 U.S.C. § 1367.

314 8 C.F.R. § 204.2.

priority date to become current prior to filing for adjustment of status. It will be important to check the DOS Visa Bulletin to see if their priority date is current. See [Section III.D](#).

A petitioner must submit evidence to show they meet the requirements for a VAWA self-petition (and adjustment of status when filing the I-485). The USCIS website has an informational [checklist](#) of evidence to provide with the petition. After filing an I-360, unless there is an issue, an individual should get a prima facie notice, which can be used to obtain some public benefits.

BENEFITS OF AN APPROVED VAWA SELF-PETITION

An individual who has an approved I-360 VAWA self-petition or is a derivative of an approved petition will be eligible for an EAD.

TIP: Even if your client is too young to work, it is oftentimes a good idea to go ahead and file the Form I-765 for an EAD because this can serve as a helpful ID for the child. With the EAD, the child can be issued a social security number which can be beneficial or helpful to the child for schooling, medical needs, or other purposes.

The timing of their adjustment of status application will vary depending on whether your client's abusive family member was a lawful permanent resident or U.S. citizen. If your client is a spouse or child of a U.S. citizen, they can file for adjustment of status (if eligible) concurrently with the I-360, while the I-360 is pending, or immediately upon approval. If your client is a spouse or child of a lawful permanent resident, they must wait for their visa priority number to become available before they are eligible to apply for adjustment of status. Generally, USCIS grants deferred action to these individuals to allow them to stay in the United States while waiting to adjust status.

CLIENT IN REMOVAL PROCEEDINGS

If your client is in removal proceedings, then your client would want to consider VAWA cancellation of removal as a form of relief in immigration court. Determining whether to file a VAWA case before USCIS or VAWA cancellation of removal in immigration court will depend on the facts of the case. There are certain instances when a youth can qualify for VAWA cancellation of removal but not VAWA. The eligibility requirements for VAWA cancellation of removal include:³¹⁵

- Has been battered or subject to extreme cruelty by a U.S. citizen or lawful permanent resident spouse³¹⁶ or parent (or a parent of a child who either currently or previously was battered or subjected to extreme cruelty by a U.S. citizen or lawful permanent resident spouse);
- Has been physically present in the United States for a continuous period of at least three years;
- Has been a person of good moral character;
- Is not admissible or deportable based on certain grounds; and
- Can show that removal would result in extreme hardship to the applicant, their child, or their parent.

It is also important to know that there is a 4,000 cap per year for those who can be approved for VAWA cancellation of removal.³¹⁷ Your client can file for VAWA cancellation of removal by filing [Form EOIR-42B, Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents](#) and other necessary documents with the immigration court. Read more about the differences in VAWA and VAWA cancellation of removal in ASISTA's [Know Your VAWA Options: Self-Petition Compared with "Special Rule" Cancellation of Removal](#).

315 INA § 240A(b); 8 U.S.C. § 1229b(b).

316 See *Matter of L-L-P*, 28 I&N Dec. 241 (BIA 2021). See also Joanna Mexicano Furmanska, *BIA Provides Guidance on Special Rule Cancellation Eligibility*, CLINIC (Mar. 22, 2021), <https://cliniclegal.org/resources/humanitarian-relief/bia-provides-guidance-special-rule-cancellation-eligibility>.

317 INA § 240A(e)(1); 8 U.S.C. § 1229b(e)(1).

Links to Help You with YOUR CLIENTS' FAMILY-BASED IMMIGRATION AND VAWA CASES

- Check out CILA's [101 webinar: Family-Based Immigration and VAWA for Unaccompanied Children](#) (41 minutes).
- View CILA's [webinar, Immigrant Survivor Relief for Unaccompanied Children](#), (1 hour, 29 minutes), August 2023.
- For more information on age calculations and [USCIS policy](#) related to the Child Status Protection Act (CSPA), read ILRC's [USCIS Child Status Protection Act Policy Update](#), Ariel Brown, September 2025.
- **Family-Based Cases:** Read CILA's blog post, [Supporting Our Clients in the Interim by Rescreening for Relief: Family-Based Petitions](#), January 2025. If you are representing a LGBTQ client who is seeking a petition on marriage, you may want to review ILRC's practice advisory [Family-Based Petitions for LGBTQ Couples: Considerations](#), Em Puhl, January 2020. Also, review ILRC's Chapter 1: [Qualifying Family Relationships and Eligibility for Visas](#), September 2017. Review CLINIC's resources [Beware the Dangers of Naturalization for Child Beneficiaries](#), Charles Wheeler, May 2021 and [Five Things to Know about Fraud and Marriage-Based Petitions](#), Elizabeth Carlson, April 2021. Check out the ABA Commission on Immigration webinar about immigration for family groups: [Common Forms of Immigration Relief for Family Groups and How to Screen for Them](#) (1 hour, 30 minutes), February 2023. CLINIC provides several resources relating to family-based immigration law, including [Practice Advisory: Sham Marriages and Marriage Fraud: A Summary of Recent Case Law and Tips for Practitioners](#), January 2025, and [Age-Out Rules for Afghan SIV Derivative Children](#), Elizabeth Carlson and Charles Wheeler, January 2025. Review AIC's [Judicial Review of Visa Decisions After the Supreme Court's Decision in Department of State v. Muñoz](#), January 2025.
- **Waivers:** CLINIC provides several [resources](#) pertaining to preparing an extreme hardship waiver, December 2018.
- **Inadmissibility Grounds:** Review ILRC's practice advisories: [Immigrants and Marijuana](#), Kathy Brady, Zachary Nightingale, and Matt Adams, May 2021. [Public Charge Safe to Use List](#), available in English and Spanish, May 2021. [Understanding Unlawful Presence Under INA § 212\(A\)\(9\)\(B\) and Waivers of Unlawful Presence, I-601 and I-601 A](#), March 2019. Learn more about unlawful presence bars with CLINIC's resource [Board Affirms That Unlawful Presence Bars Continue To Run While Noncitizen Is in the United States](#), Elizabeth Carlson and Charles Wheeler, February 2023.
- **VAWA:** Review the [NIJC Procedural Manual for VAWA And Appendices](#) with several materials. Check out ILRC's practice advisory [Humanitarian Forms of Relief Part I: U, T, VAWA](#), Veronica Garcia, June 2019 and practice advisory [Document Gathering Guide for VAWA Self-Petitioners](#), Veronica Garcia, January 8, 2021. Read through the practice advisory produced by ASISTA, ILRC, and CLINIC about VAWA, [VAWA Practice Advisory: VAWA Self-Petition Policy Updates](#), June 2022. Read ASISTA's [Practice Alert: VAWA Self-Petitioner Interviews at USCIS Field Offices](#), March 2025 and ILRC's [Practice Tips for Lawyers and Clients Preparing for a VAWA Interview](#), March 2025. Learn more in ILRC's practice advisory [Applying for Adjustment of Status Through VAWA](#), July 2021.
- **VAWA Cancellation of Removal:** Learn more about VAWA cancellation of removal by reading NIPNLG and ILRC's practice advisory [VAWA Cancellation of Removal](#), Ann Block, Michelle Méndez, Rebecca Scholtz, March 2023. Also, review ASISTA's [Know Your VAWA Options: Self-Petition Compared with "Special Rule" Cancellation of Removal](#), February 2025.



SECTION IV.

IV. PRACTICAL POINTERS

A. Research Tips

There are many sources of law governing immigration matters. Consult these primary and secondary sources of law to get you started in your research. A [full chart](#) with links to resources can be found on CILA's website.

SOURCES OF LAW & POLICY

Main Statute: Immigration and Nationality Act (INA) codified in [Title 8 of the U.S. Code](#)

[Title 8 of the Code of Federal Regulations \(C.F.R.\)](#), as well as other titles, contain provisions relating to immigration. [Title 45](#) contains the functions of the Office of Refugee Resettlement (ORR).

Most judicial decisions relating to immigration come from federal Courts of Appeals. There are also U.S. Supreme Court decisions relating to immigration.

Administrative decisions are decided in immigration courts and at USCIS/the Asylum Office. When immigration court cases are appealed, they go to the Board of Immigration Appeals (BIA). The Attorney General can also certify cases to himself.

Precedent BIA Case [List & Chart](#)

Non-precedent BIA Cases: via FOIA; available by paid subscription through [Immigrant & Refugee Appellate Center](#)

When cases are appealed from USCIS, they go to the Administrative Appeals Office (AAO).

[Precedent and Adopted AAO Decisions](#)

[Non-Precedent AAO Decisions](#)

International Law – Treaties

[United Nations \(UN\) Convention & 1967 UN Protocol Relating to the Status of Refugees](#) [Universal Declaration of Human Rights](#) (right to seek asylum)

UNHCR Handbook and Guidelines

The Supreme Court in *INS v. Cardoza-Fonseca*, stated that the UNHCR Handbook “provides significant guidance.” [UNCHR Handbook on Procedures and Criteria for Determining Refugee Status & Guidelines on International Protection](#)

Immigration attorney conduct is regulated by the Federal Rules of Practitioner Conduct when practicing in front of USCIS or EOIR.

8 C.F.R. §§ [1292.3](#), [292.3](#), [1003.101](#), and [1003.102](#). See also *Immigration Court Practice Manual* [Ch. 10](#).

SOURCES OF LAW (continued)

Field Manuals and Agency Guidelines

[USCIS Policy Manual](#)

[USCIS Adjudicator's Field Manual](#) (many parts superseded by the USCIS Policy Manual)

[Affirmative Asylum Procedures Manual](#)

[USCIS Asylum Officer Basic Training Course Lesson Modules](#)³¹⁸

[EOIR Policy Memoranda](#)

[EOIR Immigration Court Practice Manual \(ICPM\)](#)

[EOIR Appendices](#)

[EOIR Immigration Judge Benchbook](#) (Archived)

[EOIR Board of Immigration Appeals \(BIA\) Practice Manual](#)

[DHS and DOJ Memoranda](#)

[CBP Policies, Procedures, and Directives](#)

[CBP National Standards on Transport, Escort, Detention, and Search \(TEDS\)](#)

CILA Practice Toolkit & Organizational Tools

The *CILA Practice Toolkit* and its accompanying *Checklists, Cheat Sheets, & Organizational Documents* are designed for new practitioners to provide an overview of the process and give tips for communications and case management. The companion includes practical tools and several documents to help advocates stay organized and get prepared for a case. This key resource should be used together with the Guide as you dive into a pro bono case.

Links to Help GET YOU STARTED IN YOUR RESEARCH

- Check out CILA's [101 webinar: Research Tips and Learning About CILA's Resources 101](#) (49 minutes).
- View the CILA-NILA [webinar: Advanced Immigration Legal Research](#) (1 hour), March 2021.
- CILA has a [chart](#) on our website listing helpful resources to help get you started in your research.
- Check out Georgetown Law Library's [Immigration Law \(U.S.\) Research Guide](#).
- Review Loyola University New Orleans College of Law's [Immigration Law Research Resources: Research Techniques](#).
- Review the [Ninth Circuit Immigration Outline](#) prepared by the Office of Staff Attorneys of the United States Courts for the Ninth Circuit. The Texas Immigration Law Council has also prepared a [5th Circuit Immigration Outline](#).
- Be aware of EOIR's [Virtual Law Library](#) and though now archived, the [Immigration Judge Benchbook](#). Peruse EOIR's Electronic [Reading Room](#), where unpublished BIA cases are posted.
- Access the USCIS site for links to [Laws and Policy](#), including handbooks and guides used by immigration officers in performing their jobs.

³¹⁸ See American Immigration Lawyers Association (AILA), *Asylum Lesson Plans* (Oct. 13, 2023), <https://www.aila.org/library/asylum-lesson-plans>.

B. Drafting Tips

Legal writing is a central part of most children's immigration cases. Pro bono attorneys working on cases from beginning to end will likely need to use their legal writing skills on various types of documents and often for different immigration agencies. In other instances, pro bono attorneys may be working on a discrete project that focuses on using legal writing skills, such as writing a brief to support an appeal or to file a certain action in court.

This section provides some general drafting tips and resources for immigration cases. This information is not exhaustive. While this information may serve as a starting point, please exercise due diligence and engage in independent research in developing a case strategy and drafting and preparing legal documents.

The form and style of writing can vary depending on the type of document and agency for submission and filing. When determining how best to approach writing and preparing a document in a child's case, **consider the following:**

- What *type* of document are you preparing?
- Do you have access to any templates or samples to serve as an example from the organization that referred you the immigration case or from another reputable source?³¹⁹
- What is the *purpose* of the document?
- Is the document for an *affirmative* or a *defensive* case?³²⁰
- Who is the intended *audience* for the document?
- *Where* will the document be filed (e.g., USCIS, immigration court, OPLA office, etc.)?
- What is the best *tone* for the document (formal, informal, etc.)?
- What are the relevant sources of law?
- Are there filing instructions or other local rules or guidelines to consult?

LEGAL WRITING IN AFFIRMATIVE CASES

Affirmative cases typically involve relief applications being adjudicated by USCIS.

USCIS's website generally has webpages for each form of relief that link to the filing instructions and include information about what needs to be included in the filing. See more information in [Section IV.D.](#) of this Guide. Additionally, the [USCIS Policy Manual](#) provides guidance for applications being filed with USCIS.

Include a **cover letter** when sending any applications or other documents to USCIS. This letter should be written in a formal tone and include identifying case information, biographic information about the applicant, and an overview of what is being sent. It may also summarize eligibility for the legal form of relief, although the level of detail and style can vary and may depend on what is being filed with USCIS.

³¹⁹ While templates can provide a useful starting point, exercise due diligence when using them. You should always conduct additional research to verify and assess whether the template is accurate. This step is especially important in an area of law like immigration that can have rapid legal and policy changes. Filing and formatting requirements can also vary by jurisdiction. Be sure to modify the template as needed to fit the needs of your case.

³²⁰ [Section III.](#) of the Guide provides more information about the differences between an affirmative application filed with USCIS and a defensive application filed with the immigration court.

LEGAL WRITING IN AFFIRMATIVE CASES (continued)

For example, the cover letter for a Form I-589, *Application for Asylum and for Withholding of Removal* should state up front the applicant's country of origin and is usually treated like a **legal brief**—laying out the applicant's claim for asylum with a concise statement of facts at the heart of the claim and analysis of the protected grounds, legal authorities, and country conditions evidence in support of the claim.

As another example, responses to any **Request for Evidence (RFE)** or **Notice of Intent to Deny (NOID)** from USCIS should include a formal cover letter along with any other documents or information required by the RFE or NOID. The cover letter should include the applicant's name and A number, the receipt number (if applicable), and a substantive response to the issue(s) raised in the RFE or NOID.

LEGAL WRITING IN DEFENSIVE CASES

Cases that are in removal proceedings are cases that are in EOIR (immigration court), and these are considered defensive cases. The filings must comply with the requirements of EOIR and follow the rules outlined in the [Immigration Court Practice Manual \(ICPM\)](#) as well as any instructions provided by the judge.

Try to learn about your judge's filing preferences. You can consult with the organization that referred the case to you or local immigration practitioners.

EOIR filings generally require a **cover page**. For more information, consult ICPM [Ch. 3.3\(c\)](#) and check out EOIR's sample cover page in [Appendix E](#).

Written **pleadings** should conform to EOIR filing style guidelines and include a caption and formal tone. Check out EOIR's sample pleading in [Appendix K](#).

Motions are used to make requests to the court. Motions should be written in a formal tone and must include a cover page. Consult ICPM [Ch. 5](#) for additional requirements, including that the motion states with particularity the grounds for making the request and identifies the relief or remedy sought.

File an **application packet** with proposed exhibits when seeking a form of legal relief before the immigration court. These filings should comply with the document requirements in ICPM [Ch. 3.3](#).

You will likely also want to file a **legal brief** to make your arguments in writing. These are written in a formal tone with the judge as the audience and are common in cases seeking more complicated forms of legal relief, like asylum. Consult EOIR's ICPM [Ch. 4.19](#) for pre-hearing brief formatting requirements and general rules. For example, a statement of facts should be concise, and excessive use of footnotes is discouraged. A pre-hearing brief in an asylum matter typically contains the key facts and legal argument with cites to the legal authorities and country conditions reports and sources that support the claim.

Links to Help You with LEGAL WRITING IN CHILDREN'S IMMIGRATION CASES

- Improve your writing skills by watching the CILA-NILA [webinar](#), *Legal Writing Workshop* (1 hour), December 2020.
- Learn more about the BIA appeal process and tips for preparing and filing a successful BIA appeal with the CILA-NILA [webinar](#), *Winning At The BIA* (90 minutes), June 2021.
- If you are practicing in Texas, CILA has a template bank with Texas state court templates. To gain access to these templates, you must be a Texas-licensed attorney and seek access to a [CILA account](#).
- Review the example templates from NILA and CILA on CILA's *Appellate & Litigation Strategy webpage*, including a [Sample Habeas Petition ORR](#) (Habeas Petitions for Unaccompanied Children), July 2025; [Civil Cover Sheet Guide](#) (Intro to Federal Court Practice), February 2021; [Template Habeas Petition](#) (Habeas Petitions 101), August 2021; [Administrative FTCA Claim Packet Checklist](#) (Filing Administrative Claims For Wrongful Conduct), November 2021; [Example Petition for Review \(PFR\) Template](#) (Petitions for Review and Judicial Stays of Removal to the Fifth Circuit Court of Appeals 101), October 2021; [Template Motion for EAJA Fees](#) (Seeking Attorneys' Fees), June 2021; and [Example Template Complaint for SIJS delay case](#) (Mandamus Actions 101), January 2021.
- Read through sample asylum briefs shared by the [Immigration Justice Campaign](#).

C. Introduction to Immigration Court

Immigration court is part of the Executive Office for Immigration Review (EOIR). EOIR is an agency within the Department of Justice (DOJ). EOIR states its mission “is to adjudicate immigration cases by fairly, expeditiously, and uniformly interpreting and administering the Nation’s immigration laws.”³²¹

Immigration courts are Article II courts under the Executive Branch. Immigration judges (IJs) are hired by the DOJ. Their judicial authority is delegated by the Attorney General. This means that IJs are subject to certain decisions issued by the Attorney General and that they have less judicial independence than Article III judges in the federal judiciary.³²²

Key Tools & Contacts

Use the ICE [Online Detainee Locator System](#) if you need to find an adult who is detained.

You may search by A# or biographical information. This could come up if your child client’s sponsor is detained or if your child client turns 18 and is detained.

Call the EOIR automated hotline at **1-800-898-7180** to determine case status, case date, etc. You will need to enter your client’s A# to hear information regarding your specific case. You can also access the same information through the EOIR [online portal](#).

Find your local immigration court on EOIR’s website and check the [operational status](#) of your local court.

Find your [local DHS Office of the Principle Legal Advisor \(OPLA\)](#) on ICE’s website.

321 EOIR, *About the Office*, <https://www.justice.gov/eoir/about-office> (last updated May 29, 2025).

322 See 8 C.F.R. § 1003.10. Notably, the ABA, AILA, Federal Bar Association, and National Association of Immigration Judges (NAIJ) have all jointly advocated for change so that the immigration court is not under the Executive Branch. See *ABA urges Congress to create separate immigration courts*, ABA (July 2019), <https://www.americanbar.org/news/abanews/aba-news-archives/2019/07/aba-urges-congress-to-create/>; *Achieving America’s Immigration Promise: ABA Recommendations to Advance Justice, Fairness, and Efficiency*, ABA (2021), https://www.americanbar.org/content/dam/aba/administrative/immigration/achieving_americas_immigration_promise.pdf.

Removal Proceedings

Removal proceedings are conducted to determine whether a person is subject to removal from the United States.³²³ Except for bond hearings, jurisdiction vests with the immigration court when the charging document is filed.³²⁴

CHARGING DOCUMENT AND THE START OF PROCEEDINGS

Notice to Appear (NTA): The most common charging document in an immigration case is the Notice to Appear (NTA).³²⁵ For jurisdiction to properly vest, the NTA must be filed with the immigration court by DHS ICE after service on the individual respondent, the individual in proceedings.³²⁶ The section in this Guide entitled “Reviewing and Explaining the NTA and I-213” has more information about charging documents and your client’s rights and potential challenges based on them.

A case before the EOIR is styled as “In Matter of [Respondent’s Name]” and references the Alien Number (A#). You will find your client’s A# on the NTA. When you are in court, your client’s case will typically be called by the last three digits of the A#.

HEARINGS: SCHEDULING AND WHAT TO EXPECT IN GENERAL

The immigration court will typically send you or your client a Notice of Hearing informing you that a hearing has been set in the case.³²⁷ Hearings are held in person, by video conference, or by telephone conference.³²⁸ The immigration court’s website includes information regarding each court’s [operational status](#) and information how to use the video teleconference platform Webex.³²⁹

Hearings are generally open to the public, except:³³⁰

- If the respondent expressly requests a closed hearing and the judge agrees to close the hearing
- The judge will usually close any hearing involving abused children or abused spouses unless the abused child or spouse agrees to open the hearing to the public
- Hearings involving information subject to a protective order that must be kept under seal

EOIR Materials

Attorneys representing clients in removal proceedings should familiarize themselves with EOIR’s [Immigration Court Practice Manual](#) (ICPM), which contains material about appearing before the immigration court, hearings before the IJs, forms used in immigration court, and other information relevant to filing and removal proceedings.

Additionally, practitioners should be familiar with EOIR [policy memoranda](#), which provides guidance to adjudicators on many topics affecting individuals in removal proceedings. Check online before a proceeding or submitting a filing because the policy memoranda change frequently.

323 INA § 240; 8 U.S.C. § 1229a. For more information regarding removal proceedings, see INA § 240(b)(4)-(5); 8 U.S.C. § 1229a(b)(4)-(5). See also 8 C.F.R. §§ 1240.10, 1240.15.

324 8 C.F.R. §1003.14.

325 To learn more, read *The Notice To Appear (NTA)*, ILRC (June 30, 2020), <https://www.ilrc.org/resources/notice-appear-nta>.

326 INA § 239; 8 U.S.C. § 1229(a)(1); 8 C.F.R. §§ 1003.13, 1003.14, 1003.15.

327 EOIR, *PM 25-46, Notice of Hearings* (Sept. 12, 2025), <https://www.justice.gov/eoir/media/1413976/dl?inline>.

328 INA § 240(b)(2); 8 U.S.C. § 1229a(b)(2); 8 C.F.R. § 1003.25(c). Telephonic and video hearings became more prevalent during the COVID-19 pandemic and have continued since then.

329 See also EOIR, *PM 21-03, Immigration Court Hearings Conducted by Telephone and Video Teleconferencing* (Nov. 6, 2020), <https://www.justice.gov/eoir/reference-materials/OOD2103/dl>; ICPM Ch. 4.7.

330 8 C.F.R. §§ 1003.27, 1003.31(d), 1003.46, 1208.6, 1240.10(b), 1240.11(c)(3)(i).

The IJ electronically records hearings.³³¹ The official file created by the immigration court containing the documents relating to respondent's case is called the record of proceedings (ROP). Read more about ROPs and how to request a copy of the ROP further in this section.

PRO BONO REPRESENTATION IN IMMIGRATION COURT

Many immigrants in removal proceedings go to court unrepresented.³³² Pro bono legal representatives can change people's lives and help fill the gaps in representation. EOIR acknowledges the need for pro bono representation and generally has a policy to encourage pro bono representation.³³³ A July 2025 report from the Vera Institute of Justice states that “[m]ore than 900,000 children were facing deportation in immigration court in the past 12 months. Over 66 percent of these children had no attorney.”³³⁴ Learn more about the impact of having legal representation and the need for pro bono representation in immigrant children's cases in CILA's one-pager *Unaccompanied Immigrant Children: The Difference Representation Makes* and ABA COI's explainer *Unaccompanied Minors in Immigration Court: The Critical Role of Legal Representation*.

In addition to this Guide, CILA has many recorded trainings and written resources to support pro bono attorneys in their representation of immigrant youth. Check out this CILA [webpage](#) with featured information for pro bono attorneys.

PLAYERS PRESENT IN IMMIGRATION COURT

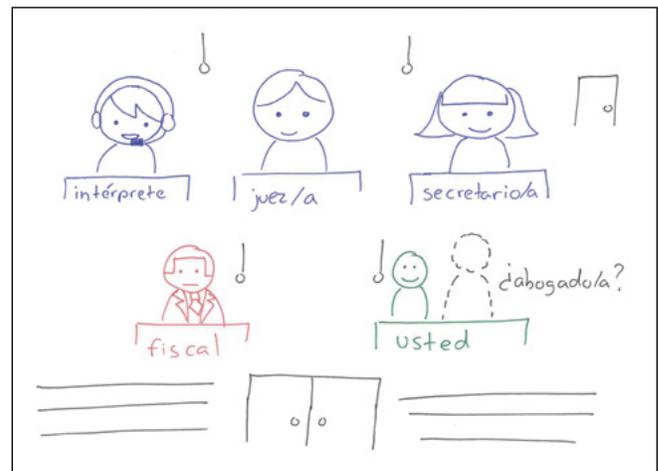
Immigration judge (IJ): An IJ shall administer oaths and receive evidence and may interrogate, examine, or cross examine the respondent, and any other witnesses.³³⁵

Government attorney: The government's interests are represented by OPLA attorneys in cases before EOIR.³³⁶ They will be your opposing counsel in immigration court. OPLA is part of ICE, an agency of DHS.³³⁷

Respondent: The respondent is your client and the person in removal proceedings.

Interpreter: Currently, government-paid interpreters are available in immigration court.

Court clerk: An EOIR employee will serve as a court clerk to assist the judge in clerical matters during court proceedings.



331 8 C.F.R. § 1240.9; ICPM Ch. 4.10.

332 See Section I.B.

333 EOIR, *PM 21-08, Pro Bono Legal Services* (Dec. 10, 2020), <https://www.justice.gov/eoir/media/1387501/dl?inline>. Also, view CILA's webinar, *Immigration Judge Perspectives on Pro Bono Representation and Best Practices* from February 2023 to hear from prior immigration judges about the difference pro bono representation can make in children's cases. At the time of the February 2023 webinar, EOIR policies in effect went further to encourage and facilitate pro bono representation than those in place at the time of publishing this Guide.

334 *Immigration Court Legal Representation Dashboard*, Vera Institute of Justice (July 2025), <https://www.vera.org/ending-mass-incarceration/reducing-incarceration/detention-of-immigrants/advancing-universal-representation-initiative/immigration-court-legal-representation-dashboard>.

335 INA § 240(b); 8 U.S.C. § 1229a(b).

336 DHS U.S. Immigration and Customs Enforcement (ICE), *Office of the Principal Legal Advisor Field Locations*, <https://www.ice.gov/contact/legal> (last reviewed/updated Feb. 20, 2025).

337 ICE is also in charge of enforcement of immigration law including identification, arrest, detention, bond management, and removal through Enforcement and Removal Operations (ERO), as well as investigations through Homeland Security Investigations (HSI).

TIP: The visual above provided by ProBAR is a great example of how to explain immigration court proceedings to a child through a drawing, so that the child can better understand what to expect. From left to right and top to bottom, the drawing shows the interpreter (intérprete), judge (juez/a), court secretary/clerk (secretario/a), government attorney (fiscal), the child respondent (usted) and outline to show possibly an attorney will be by their side (¿abogado/a?). You can use this drawing or a similar one to explain the process to your client, or you can use toys to show a model of what the courtroom will look like and who will be involved. Reassure your client you will be by their side at any court proceedings.

TYPES OF HEARINGS: BOND HEARINGS, MASTER CALENDAR HEARINGS, INDIVIDUAL CALENDAR HEARINGS

You may encounter different types of hearings during your case and the overall case flow may depend on the type of case. There can be dedicated dockets including for detained or juvenile cases.³³⁸ EOIR made some changes to the flow of cases in 2021, including directing IJs to issue more scheduling orders and to have more tasks conducted in writing rather than during a hearing.³³⁹ Keep in mind that these directives may apply differently in children's cases.

Bond Hearings: Bond hearings can be part of the process of seeking release from immigration detention. While bond has been commonly sought in adults' cases, bond hearings have always been less common in children's cases because unaccompanied children are typically detained in different facilities than adults. Youth can also be detained with family members as a family unit at any age in family immigration detention.³⁴⁰

Unaccompanied children's facilities are managed by ORR and subject to a release process that often does not involve any bond hearing.³⁴¹ If a hearing is needed, it will usually take place as a risk determination hearing for detained youth (formerly called *Flores* hearings) or some youth have needed *Saravia* hearings.³⁴²

After turning age 18, youth can be detained by ICE and placed in adult detention facilities. As a result of litigation in *Garcia Ramirez v. ICE*, youth who are in ORR shelters and age out by turning age 18 while in the ORR shelter generally should not be transferred to ICE adult detention unless there is evidence that they are a flight risk, danger to themselves or the community, and release would not mitigate the con-

Working with Youth Nearing 18 Years Old

If you are working with a youth who is close to age 18, view CILA's recorded presentation, *Working with Unaccompanied Children Aging Out*, to learn more about the unique issues facing older teenagers and how it affects their immigration cases.

Additionally, if you are working with a youth seeking SIJS in removal proceedings who could be detained or is in adult detention, review this [practice advisory](#) created by CILA along with ILRC, the End SIJS Backlog Coalition, Safe Passage Project, and NIPNLG.

338 See ICPM Ch. 4.22 (juveniles) and Ch. 9 (detention and bond). EOIR, *PM 25-41, Updates to the Dedicated Docket* (Aug. 19, 2025), <https://www.justice.gov/eoir/media/1411511/dl?inline>.

339 See EOIR, *PM 21-18, Revised Case Flow Processing Before the Immigration Courts* (Apr. 2, 2021), <https://www.justice.gov/eoir/book/file/1382736/dl?inline>; EOIR *Revises Case Flow Processing in April 2021 PM*, CILA (Apr. 2021), <https://cilacademy.org/2021/06/07/eoir-revises-case-flow-processing-in-april-2021-pm/>.

340 See AILA: *Trump Administration Restarts Family Detention Guaranteeing Harm and Trauma to Children and Parents*, AILA (Mar. 14, 2025), <https://www.aila.org/library/aila-trump-administration-restarts-family-detention-guaranteeing-harm-and-trauma-to-children-and-parents>. Dolores K. Schroeder, *The Long-Lasting Trauma of Family Detention*, *Time* (Apr. 30, 2025), <https://time.com/7280104/the-trauma-of-family-detention-centers/>. Valerie Gonzalez, *New insight into Texas family detention reveals adults fighting kids for clean water*, Associated Press (June 21, 2025), <https://apnews.com/article/migrants-child-supervision-texas-e4994b2b6786717ea79a4be230e476bf>.

341 Read *ABA CILA's Fact Sheet: Unaccompanied Children at the Border* to learn about the systems and general process immigrant children go through after arriving.

342 Learn more about risk determination hearings in CILA's resource *Overview of the ORR Foundational Rule for the Unaccompanied Children Program*. Read about the *Saravia v. Barr* Settlement from the ACLU and Safe Passage Project.

cerns.³⁴³ Unaccompanied children released to live with a sponsor in the community who later turn age 18 may be impacted by ICE enforcement and placed in ICE adult detention.

Bond hearings for adults in ICE detention are outside the scope of this resource.³⁴⁴ However, it is important to be aware that those eligible for bond from ICE detention narrowed in 2025 because of Board of Immigration Appeals (BIA) cases: *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025) and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).³⁴⁵

Habeas Petitions

Out of necessity, attorneys have moved toward filing more habeas petitions for youth to seek release from ORR detention and for adults to seek release from ICE detention. This is an area with frequent changes so check for updates. There are relevant resources available:

- Acacia Center for Justice, [Habeas Bridge Project](#)
- NILA, [Practice Advisory Habeas Corpus Petitions](#) and related templates, Jan. 2025
- CILA-NILA, [Federal Court Basics](#) webinar and practice advisory, Apr. 2025
- CILA-NILA, [Habeas Petitions for Unaccompanied Children](#), webinar and materials, July 2025
- CILA, [Habeas Petitions for Unaccompanied Children Part II](#), webinar and materials, Oct. 2025
- NIPNLG, [Quick Guide to Release from Immigration Detention for SIJS Youth](#), Jan. 2026
- NWIRP, [Maldonado Bautista v. Noem litigation updates](#) with practice advisory and template, Dec. 2025

Master Calendar Hearings (MCH): These hearings cover more procedural matters, such as taking pleadings and scheduling. MCHs are often your client's first appearance before an IJ and can be when the path of the case is set. Even though MCHs are typically short, it is important to be prepared because an IJ can still issue a removal order at an MCH. This may occur, for example, if your client does not appear, abandons an application by not being prepared, or does not have any viable relief. Generally, MCHs run on a docket. You may have to wait hours for your case to be called, but your hearing will likely be short (approximately 5 to 15 minutes). Immigration court hearings do not typically run in the order of the names listed on the docket. It depends on the judge, but frequently cases with attorneys or pro bono representation will go first and in a first-come, first-served order.

A client may have more than one MCH. If you need more time to prepare the case or to reschedule the MCH, you may file a written motion in advance or orally seek a continuance at the time of your MCH. It is usually best practice to file a written motion so you receive a written order.

³⁴³ See FAQ: *What the Garcia Ramirez v. ICE decision means for unaccompanied children about to turn 18*, AIC and NIJC (Feb. 2025), <https://immigrantjustice.org/for-attorneys/resources/faq-what-the-garcia-ramirez-v-ice-decision-means-for-unaccompanied-children-about-to-turn-18/>. However, this is an area of law that may be subject to change in the future, and it is important to check for any recent litigation or policy updates if you are working with a youth who might be aging out of ORR custody. See *Legal Groups File Emergency Motion to Stop ICE from Jailing Immigrant Teens in Adult Detention*, AIC (Oct. 3, 2025), <https://www.americanimmigrationcouncil.org/press-release/legal-groups-challenge-ice-jailing-immigrant-teens/>.

³⁴⁴ Read ICPM Ch. 9.3 on bond proceedings. See *Resource List for Legal Service Providers: Motions to Reopen, Stays of Removal, & Bond Hearings*, CILA (Feb. 26, 2025), <https://cilacademy.org/resource-file/resource-list-for-legal-service-providers-mtr-stays-of-removal-bond-hearings/>.

³⁴⁵ See *Detention under INA § 235(b): The Statutory Scheme and Strategies for Release*, AIC (Sept. 2, 2025), <https://www.americanimmigrationcouncil.org/practice-advisory/ina-235b-detention-practice-advisory/>. *BIA Decision Strips Immigration Judges of Bond Authority, All but Guaranteeing Mandatory Detention for Undocumented Immigrants*, AIC (Sept. 12, 2025), <https://www.americanimmigrationcouncil.org/blog/bia-ruling-immigration-judges-bond-mandatory-detention-undocumented-immigrants/>.

Typically, at the first MCH, the following will take place:

- The IJ will provide advisals to the respondent.³⁴⁶
- The IJ will likely ask your client some basic questions: name, birthdate, current address, best language, if they would like you to represent them, etc.
- Respondent will plead to the NTA.
- The IJ will designate a country of removal (where your client will be removed to if ultimately denied relief). The IJ will typically ask you or the respondent to designate a country of removal. The common response by the representative is “respondent declines to designate.” This is for two reasons: first, DHS has the burden to prove alienage and second, if your client is seeking asylum, you do not want to admit on the record that your client is willing to return to their home country. Consider in advance which countries you believe will come up at the hearing as potential countries for removal and discuss this issue with your client.³⁴⁷
- Respondent will indicate what relief will be sought and applications (or proof of filing applications with USCIS) should be submitted, if not already done so in advance. For asylum cases filed with the IJ in particular, be prepared to explain the basis for seeking relief as the IJ may pretermite an asylum application that does not include all the required information.³⁴⁸
- The IJ will schedule next court date, either an MCH or Individual Calendar Hearing (ICH).

The ICPM has helpful information regarding how to do pleadings in immigration court.³⁴⁹ Review this section in advance of your MCH.³⁵⁰ The IJ may expect any application(s) for relief to be filed at an MCH, or in advance of the next MCH. The use of scheduling orders has increased in immigration courts. It is important to see what deadlines, if any, the judge set in a case either at a hearing or in a scheduling order. It is also important to review the ROP if your client has attended any hearings *pro se* to understand what deadlines the IJ has set and what you should be prepared to file when you first appear as counsel.

Challenges arise if the IJ has set a deadline that you cannot meet as new counsel on a case. In this situation, you can file a written motion for a continuance and/or an extension of a deadline explaining the need for more time, but it is also important to know the judge could deny the motion and find that your client abandoned the option for relief for not meeting their deadlines (even if you recently came onto the case). Deadlines are very important to meet. The IJ can either continue the matter to another MCH so an application (or proof of filing applications with USCIS) can be submitted, or schedule an ICH and provide a due date (aka call up date) for any applications to be filed with the court in advance of the ICH.

Individual Calendar Hearings (ICH): An ICH is your client’s merits hearing. This is a hearing set specifically for your client to appear at a specific date and time; it is not run on a docket. The IJ will hear any client and witness testimony, consider evidence (submitted in advance by certain deadlines), and may make a ruling on your client’s case. Usually, your client will only have one ICH. The length of an ICH varies per case, judge, and jurisdiction. It is common for an ICH to last 2 to 4 hours (sometimes longer). If the judge’s schedule does not allow for the case to keep going or if the judge is interested in seeing more

346 EOIR has used video advisals in some immigration courts and posted detained and non-detained advisal videos online. See DOJ, *FOIA Library*, <https://www.justice.gov/eoir/foia-library-0> (last updated Sept. 10, 2025).

347 As of publication, respondents with already approved withholding of removal or CAT claims have been deported to third countries. This issue is actively being litigated. Be aware of this trend and the possibility for other countries to be designated during proceedings. NILA, NWIRP, and FIRR’s *Practice Advisory: Protecting Noncitizens Granted Withholding of Removal or CAT Protection Against Deportation to Third Countries Where They Fear Persecution/Torture* reviews the law surrounding designating countries of removal. Also, read through NILA, NWIRP, and Human Rights First’s *Practice Alert: Third Country Deportations and D.V.D. v. DHS* for more on the litigation. See also Section III.C. If an alternative country is designated during proceedings, be prepared to discuss with your client whether they have any fear of persecution or torture in the alternative country or countries identified.

348 See EOIR, *PM 25-28, Pretermission of Legally Insufficient Applications for Asylum* (Apr. 11, 2025), <https://www.justice.gov/eoir/media/1396411/dl?inline>.

349 See ICPM Ch. 4.15, Apps. K (Ex. Pleading), L (Ex. Oral Pleading).

350 See also *Mechanics of Immigration Court Part 1: The Master Calendar Hearing*, ABA COI (Feb. 2022), https://www.youtube.com/watch?v=gDEd_vkDsU0&t=141s.

evidence on a particular issue, it is possible for the case to get continued to another date. Sometimes you may also need to advocate for more time for additional testimony from your client or a witness if the judge is pressuring you to stop without fully providing an opportunity to present the case.

Typically, at the ICH, the following will take place:

- **Stipulations:** Some judges will begin by asking the parties whether they have narrowed the issues in the case by stipulating to anything.
- **Pre-hearing submissions:** You will likely be required to file certain documents before the ICH, and the IJ will go over the parties' submissions at the start of the hearing. The IJ will make any decisions about any pending motions and enter evidence into the record.
 - Any applications, exhibits, motions, witness list, and criminal history chart (if applicable) should be filed in advance and by relevant deadlines.
 - Be prepared to raise any objections to the government's evidentiary submissions or motions, if applicable.
- **Opening statements:** Be prepared to give an opening statement in case the IJ gives you this opportunity.
- **Testimony:** You and the government will have the opportunity to present witnesses. You should make requests in advance if any witness will need an interpreter.
 - Your client will likely testify. The IJ will have the opportunity to ask your client questions
 - * **TIP:** If your client may need to testify, review CILA's resource, *Youth's Testimony in Immigration Court*, to review practical tips and issues to consider discussing with your client in advance.
 - The government attorney will cross examine your client.
 - You will have the opportunity for re-direct.
 - Any other witnesses you have can testify, including experts.³⁵¹ The judge may allow for telephonic testimony. This requires a motion for telephonic testimony to be filed in advance of the hearing. The government attorney can cross examine your witnesses, and you can ask questions on re-direct.
 - The government attorney has the opportunity to present witnesses, but this often does not happen. If a witness is presented, you will have the opportunity to conduct cross examination.
- **Closing Statements:** Be prepared to give a closing statement in case the IJ gives you this opportunity.

Resources on Merits Hearings

An ICH is the opportunity to fully present your client's case for relief. For more information, review the ABA COI's webinar, *Mechanics of Immigration Court Part 3: The Individual Calendar/Merits Hearing* (Mar. 2022). Preparation is very important. Check out CILA's *How to Prepare for an Individual Hearing: Different Practitioner's Perspectives* for some tips and to learn more.

³⁵¹ Having an expert witness testify in your immigration case can make a difference. To learn more about working with experts in immigration court, see Kelcey Baker, Katherine Freeman, Gigi Warner, and Professor Deborah M. Weissman, *Expert Witnesses in U.S. Asylum Cases: A HANDBOOK* (2018), University of North Carolina at Chapel Hill School of Law, <https://law.unc.edu/wp-content/uploads/2019/10/expertwitnesshandbook.pdf>. See also *Mechanics of Immigration Court Part 2: Corroboration, Witnesses, and Working with Experts*, ABA COI (Feb. 2022), <https://www.youtube.com/watch?v=PPN9NLS0MY4>; *Engaging Country Condition Experts in Asylum Cases*, ABA COI (Dec. 2022), <https://www.youtube.com/watch?v=EWpLkuoOZyw>.

- **Decision:** The IJ may provide an oral decision or issue a written decision. Sometimes the judge will continue the case if they want to see specific evidence or hear particular testimony or set the case for another hearing to give the decision.
- **Appeal:** The IJ will ask if you wish to reserve your client’s right to appeal. This only preserves your client’s option to appeal. This does not mean your client has filed an appeal in the case. There is a separate process for seeking an appeal with the BIA.

REMOTE VS IN-PERSON IMMIGRATION COURT HEARINGS

Hearings by video conference or telephone conference may raise due process concerns, particularly for merits hearings and when working with children.³⁵² Virtual hearings also raise questions about venue and precedent—especially if the parties appear from different locations.³⁵³ In some cases, the client may prefer to appear remotely including if it is difficult to travel due to the distance to the court or transportation issues, if they have work or school, for medical reasons, or other issues.

Previously, there was a longstanding policy to discourage enforcement actions at sensitive locations like schools, medical facilities, and places of worship. In January 2025, DHS changed their [policy](#) by (1) rescinding prior guidelines on enforcement actions in protected areas and (2) instructing officers to use discretion along with a “healthy dose of common sense” in choosing where to engage in enforcement. DHS further changed their policies about ICE enforcement around courthouses,³⁵⁴ which led to ICE conducting arrests at immigration courts.³⁵⁵ If courthouse arrests continue, requesting a virtual appearance may be in the client’s best interest to minimize their risk of being arrested by ICE and detained.

TIP: Consider the options and discuss them with your client. Make a strategy and advocacy plan to request the desired format for the hearing. The strategy may differ based on the type of hearing—a master or individual hearing, as it is often recommended to have merits hearings in person. However, it will vary depending on the facts and circumstances and what is occurring at your local immigration court. Check with other practitioners in your area to find out more information and discuss the options with your client.

352 See *Immigration Hearings by Video: A Threat to Children’s Rights to Fair Proceedings*, Young Center for Immigrant Children’s Rights (Jan. 21, 2020), <https://www.theyoungcenter.org/publications/immigration-hearings-by-video-a-threat-to-childrens-right-to-fair-proceedings/>. See also Amanda Robert, *Video tele-conference program for immigrant children ‘is contrary to the American pursuit of justice,’ ABA says*, ABA Journal (Mar. 5, 2020), <https://www.abajournal.com/news/article/aba-president-calls-for-end-to-new-video-teleconference-program-for-unaccompanied-children>.

353 The BIA case *Matter of Garcia* attempted to settle this issue in 2023 when it held:

For choice of law purposes, the controlling circuit law in Immigration Court proceedings is the law governing the geographic location of the Immigration Court where venue lies, namely where jurisdiction vests and proceedings commence upon the filing of a charging document, and will only change if an Immigration Judge subsequently grants a change of venue to another Immigration Court.

28 I&N Dec. 693 (BIA 2023). See also *Board of Immigration Appeals Issue Decision on Choice of Law for Virtual Hearings*, CLINIC (Apr. 26, 2023), <https://www.cliniclegal.org/resources/removal-proceedings/board-immigration-appeals-issue-decision-choice-law-virtual-hearings>.

354 These policies were later updated in May 2025 in the ICE Memorandum, *Civil Immigration Enforcement Actions In or Near Courthouses*.

355 Following increased arrests at immigration court, advocates and immigrants filed a lawsuit challenging the ICE arrests. Read more on the [litigation](#). Also review *Pro Se Guide for Motion to Change Hearing to WebEx*, NIPNLG (June 6, 2025), <https://nipnlg.org/work/resources/pro-se-guide-motion-change-hearing-webex>.

Life of a Case

If the IJ denies your application for relief and your client chooses to appeal the case, the graphic below shows the trajectory the case may take. Timing of the appeal is important, as you must file a [Form EOIR-26 \(E-26\)](#), *Notice to Appeal from a Decision of an Immigration Judge* with the BIA within 30 days of the IJ's decision. Learn more about the appellate process in the CILA-NILA webinar *Winning at the BIA* from June 2021.



SPECIAL COURT GUIDANCE FOR CASES INVOLVING CHILDREN

There are some special considerations for the immigration court when the respondent is a child. Under the federal regulations, “the Immigration Judge shall not accept an admission of removability from an unrepresented respondent who is incompetent or under the age of 18 and is not accompanied by an attorney or legal representative, a near relative, legal guardian, or friend; nor from an officer of an institution in which respondent is an inmate or patient.”³⁵⁶ An IJ should not accept an admission of removability from a child who appears alone and doing so could be the basis of an appeal, objection, and/or motion to terminate proceedings.

Immigration court policies and law include some protections for youth.³⁵⁷ Some of these are included below, and you are encouraged to review these sources to see how you can advocate for your client.

- [ICPM Ch. 4.22 Juveniles](#)
 - “(c) Courtroom orientation. — Juveniles are encouraged, under the supervision of court personnel, to explore an empty courtroom, sit in all locations, and practice answering simple questions before the hearing. The Department of Health and Human Services, Office of Refugee Resettlement, provides orientation for most juveniles in their native languages, explaining Immigration Court proceedings.”
 - “(d) Courtroom modifications. — Immigration Judges make reasonable modifications for juveniles. These may include allowing juveniles to bring pillows, or toys, permitting juveniles to sit with an adult companion, and permitting juveniles to testify outside the witness stand next to a trusted adult or friend.”
- [EOIR Operating Policies and Procedures Memorandum \(OPPM\) 17-03](#)
 - Applies to any case involving an unmarried individual under the age of 18, regardless of whether meets unaccompanied child definition (as respondent or third-party witness)
 - Reminds adjudicators to always ensure that a child is competent to testify
 - Attorneys and the IJ should employ “age-appropriate” procedures and “child-sensitive” questioning
 - “Best interest of the child” cannot be used as a legal standard—concept alone cannot be used to provide legal basis for granting relief or protection
 - Notes that children may require more frequent breaks due to emotional and physical reasons
 - Allows judges to not wear their judicial robe to improve the ability of the child to participate
 - Indicates judges should use same standards when evaluating testimony of children and adults including when assessing credibility and whether they meet their burden of proof

³⁵⁶ 8 C.F.R. § 1240.10(c).

³⁵⁷ See CILA’s resource, *Youth’s Testimony in Immigration Court*, for tips to assist youth who are testifying with a focus on protections available under EOIR’s policy memoranda and practice manual. Also, read CILA’s blog post, *Protecting Unaccompanied Children who are Not Competent to Participate in Removal Proceedings*.

INTERPRETATION IN IMMIGRATION COURT

Interpreters are provided at government expense for “individuals whose command of the English language is inadequate to fully understand and participate in removal proceedings.”³⁵⁸ While interpreters should be provided in immigration court, in many courts only Spanish interpreters are available at MCHs unless the respondent seeks a continuance to have an interpreter, or files a motion in advance of a hearing for an interpreter for a language other than Spanish. At the first MCH, the IJ should ask the respondent for their best language. If the court does not ask, you should inform them of your client’s best language.³⁵⁹ You want the court to be on notice regarding interpretation needs before the ICH.

EVIDENTIARY RULES IN IMMIGRATION COURT

The Federal Rules of Evidence do not apply in immigration court. This generally means that the strict rules of evidence are not applicable in removal proceedings.³⁶⁰ Instead, evidentiary procedures are governed by the INA, ICPM, and any local immigration court rules or rules in the IJ’s scheduling order. The BIA has recognized that the sole test for admission of evidence in immigration court proceedings is relevance and fundamental fairness.³⁶¹ The IJ has discretion as to what weight to give evidence and may consider hearsay if the evidence is probative and not fundamentally unfair.³⁶² The Immigration Judge Benchbook has more information about how judges have been advised to consider evidentiary issues.³⁶³

DUE PROCESS IN IMMIGRATION COURT

Your client has Constitutional due process rights in immigration proceedings.³⁶⁴ It is well established that the Fifth Amendment’s guarantees of due process extend to non-citizens in removal proceedings, entitling them to a full and fair hearing.³⁶⁵ Having counsel helps ensure that children receive the appropriate protection required by statutes, regulations, and case law. As noted by one higher court analyzing an immigration judge’s actions towards a pro se unaccompanied minor, “Courts should not exalt form over substance without compelling reason, particularly when important rights are at stake.”³⁶⁶

Evidence can be excluded or suppressed on due process grounds in removal proceedings if its use is not fundamentally fair.³⁶⁷ You may make an objection based on Fourth and Fifth Amendment violations. To prevail in a due process challenge to the exclusion of evidence, the respondent must show both (1) that they were denied a reasonable opportunity to be heard on their evidence and (2) that there was resulting prejudice. You should make a proffer of evidence that includes an explanation of the probative value of that evidence.³⁶⁸ You want this information on the record so that if you appeal there will be a basis for arguing prejudice to the client.

358 ICPM Ch. 4.11.

359 ICPM Ch. 4.15(o)(1).

360 *Matter of DeVera*, 16 I&N Dec. 266, 268 (BIA 1977).

361 *Matter of Ponce-Hernandez*, 22 I&N 784 (BIA 1999); *Matter of Toro*, 17 I&N Dec. 340 (BIA 1980).

362 *Bustos-Torres v. INS*, 898 F.2d 1053 (5th Cir. 1990). 8 C.F.R. §§ 1240.7(a) and 1240.46(c) provide that an immigration judge “may receive in evidence any oral or written statement that is material and relevant to any issue in the case previously made by the respondent or any other person during any investigation, examination, hearing, or trial.”

363 See EOIR, *Immigration Judge Benchbook (Archived)*, <https://www.justice.gov/eoir/archived-resources> (last updated May 8, 2018). Even though the Benchbook is archived, it can still be a helpful reference guide.

364 See also *What Does “Due Process” Mean for Immigrants and Why Is It Important?*, Vera Institute for Justice (June 4, 2025), <https://www.vera.org/news/what-does-due-process-mean-for-immigrants-and-why-is-it-important>; *Due Process and the Courts*, AIC (Sept. 12, 2025), <https://www.americanimmigrationcouncil.org/about-immigration/due-process-and-courts/>; Maria Ramirez Uribe, *Is Trump right that immigrants in U.S. illegally have different due process standards? That’s False*, Politifact (May 8, 2025), <https://www.politifact.com/factchecks/2025/may/08/donald-trump/Donald-Trump-immigrants-illegal-due-process-rights/>.

365 *Matter of M-D-*, 23 I&N Dec. 540 (BIA 2002).

366 *Davila-Bardales v. I.N.S.*, 27 F.3d 1, 3 (1st Cir. 1994).

367 See *Matter of Garcia-Flores*, 17 I&N 325 (BIA 1980) (“Violation of a regulatory requirement by a Service officer can result in evidence being excluded or proceedings invalidated where the regulation in question serves a purpose of benefit to the [noncitizen] and the violation prejudiced interests of the [noncitizen] which were protected by the regulation.”).

368 See Jason S. Lambert, *The Perfect Proffer*, Florida Bar Journal (Apr. 2015), <https://www.floridabar.org/the-florida-bar-journal/the-perfect-proffer/>.

CHECKING THE RECORD

When working with your client, you will gather information through client interviews and, if possible, do your due diligence and review all available documents in the case.

EOIR Record of Proceedings (ROP)

You will likely want to request a copy of the ROP if your client is considering an appeal, if there was prior counsel, or if your client represented themselves pro se in a hearing before you began representation.

TIP: Keep in mind that requesting a ROP is a separate process from filing a FOIA request. You should consider making both types of requests when seeking information about the case.

EOIR's *Request a Record of Proceeding (ROP) webpage* provides an overview of who may request a copy of the ROP. A practitioner can make the request on behalf of their client if they submit a Form EOIR-28 (E-28), *Notice of Entry of Appearance as an Attorney or Representative before the Immigration Court*, or if they have one already on file. While they may use *Form EOIR-59 (E-59), Certification and Release of Records* to request a copy, practitioners typically take the simpler approach of emailing the request to the local EOIR office. In general, the requesting email should (1) include the respondent's information and attorney's full name and EOIR ID; (1) identify the portions of the ROP being requested; and (3) state the method of delivery (in-person, email, or mail) for the ROP copy.³⁶⁹ Review this [website](#) for more detailed information about how to make a request by email.

Freedom of Information Act (FOIA) Requests

You can use FOIA requests to get any documents related to your case from the federal agencies.³⁷⁰ This section discusses what documents may be available and how to request copies. For unaccompanied children, USCIS, CBP, ICE, EOIR, and ORR, are all likely to have been involved in the case and may have records. Your client will likely have a centralized "Alien File (A File)" with USCIS that is shared by the agencies. But you will want to consider requesting documents from each of the agencies involved.

It is best practice to send a FOIA request to **USCIS** for a copy of the A File and any other records they may have related to your client. You can make the request [online](#). You will also need to file a *Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative*. Check out USCIS's [website](#) about making a FOIA request and how to send the request.³⁷¹

EOIR is likely to have records if your client is in removal proceedings. Check out [EOIR's website](#) to learn about how to make a FOIA request with EOIR's FOIA Service Center.

CBP and **ICE** may have records related to your client's entry into the country or initial detention. To learn about requesting these records, review this *Guide to Obtaining Detention Records* by the AIC and Black Alliance for Just Immigration (BAJI). Guidance for how to make requests is also available on CBP's website and [ICE's website](#).

ORR should have a case file if your client has been designated as an unaccompanied child. Review ILRC's practice advisory, *Obtaining Office of Refugee Resettlement Records for Clients Who Were Detained as Children*, and ORR's [website](#) to learn how to obtain a copy of your client's ORR file.

³⁶⁹ For more information about obtaining copies of the record, review ICPM Ch. 1.5(c), 4.10.

³⁷⁰ See *The Freedom of Information Act and Immigration Agencies*, AIC (June 4, 2021), <https://www.americanimmigrationcouncil.org/practice-advisory/freedom-information-act-and-immigration-agencies/>.

³⁷¹ See also DHS, *Steps to File a FOIA Request*, <https://www.dhs.gov/steps-file-foia> (last updated Jan. 14, 2026); DHS, *FOIA Contact Information*, <https://www.dhs.gov/foia-contact-information> (last updated Jan. 14, 2026); *Nightingale v. USCIS and FOIA Requests for Immigration Case Files (A-Files)*, NILA, AIC, NWIRP, and Law Offices of Stacy Tolchin (Apr. 17, 2023), https://www.americanimmigrationcouncil.org/sites/default/files/practice_advisory/23.04.17_nightingale_foia_4th_update_-_final.pdf; *FOIA Requests at DHS*, ILRC (Oct. 2, 2023), <https://www.ilrc.org/resources/foia-requests-dhs>; *Attacks on the Freedom of Information Act (FOIA) Continue*, ILRC (Jan. 12, 2026), <https://www.ilrc.org/resources/attacks-foia-continue>.

Before Your First Case in Immigration Court

Attorneys must **register with EOIR** before their first appearance in immigration court in order to represent someone in immigration court proceedings or before the BIA. Currently, EOIR advises practitioners to go to their local immigration court with a valid form of identification to complete the [eRegistration validation process](#). If going in person is not an option, contact your local immigration court to see if a virtual identity verification process is available. Once your identity is verified, EOIR staff will activate your EOIR account, notify you via email, and give you an EOIR Identification Number, which should be used when filing Form E-28. For more information, review [EOIR's eRegistration Validation Process](#) and [EOIR's Attorneys and Fully Accredited Representatives Registration Process](#).

It is important to familiarize yourself with the [Immigration Court Practice Manual \(ICPM\)](#) prior to appearing to learn the rules of the court. The ICPM guidance includes court deadlines, sample documents, and pleadings. Each IJ has their own style, rhythm, and particularities. It is best practice to observe court (and ideally the IJ assigned to your case) in advance of your first appearance and ask other local practitioners what can you expect.

TIP: Since court calendars vary, you may call the court and speak to the clerk to find out which days in a given period there will be MCHs so you know when you can observe. Generally, you do not need to ask permission to observe MCHs since they are open to the public. You may also want to reach out to local attorneys to see if you can observe an ICH. While these are technically also open to the public, you should ask the attorneys of record in advance so they have time to consult with their client regarding the request. Check the EOIR website regarding your local immigration court's operational status and call ahead.

A list of EOIR forms can be found on EOIR's [website](#). Associated fees can be found on EOIR's website on the [EOIR Forms webpage](#) and the [Types of Appeals, Motions, and Required Fees webpage](#). EOIR has a [Payment Portal](#) to pay fees for certain applications and motions. EOIR ICPM [Ch. 3.4](#) provides some information on filing fees. The amount of the fee and processes are subject to change, so it is best to check EOIR's website and with experienced practitioners for the most up to date information.³⁷²

COMMON IMPORTANT FORMS IN IMMIGRATION COURT

Form EOIR-28, *Notice of Entry of Appearance as an Attorney or Representative before the Immigration Court*

Form EOIR-33/IC, *Alien's Change of Address Form/Immigration Court*

Form I-862, *Notice to Appear (NTA)*

Form I-213, *Report of Deportable/Inadmissible Alien*

Form EOIR-61, *Notice of Entry of Limited Appearance for Document Assistance Before the Immigration Court*

³⁷² See also *Comparison Chart of the Immigration-Related Fee Changes Brought by H.R.1 the So-Called One Big Beautiful Bill Act*, NIPNLG (July 22, 2025), <https://nipnlg.org/work/resources/comparison-chart-immigration-related-fee-changes-brought-hr1-so-called-one-big>; Elizabeth Taufa, *HR1 Fees at USCIS and EOIR*, ILRC (Sept. 18, 2025), <https://www.ilrc.org/resources/hr1-fees-uscis-and-eoir>.

ENTERING YOUR APPEARANCE IN IMMIGRATION COURT

To represent your client in immigration court, you will need a signed Form [EOIR-28 \(E-28\)](#), *Notice of Entry of Appearance as an Attorney or Representative before the Immigration Court* for your client to enter appearance. This may be submitted online through the ECAS portal or in court. If there has been a prior representative, you will need to file a motion to substitute counsel. As noted in the ICPM, while not required, it is highly encouraged that the E-28 be printed on light green paper.³⁷³

Practitioners can enter a “limited appearance” for the sole purpose of assisting **pro se** petitioners with **document** preparation. A Form E-28 should not be filed when entering a limited appearance. Instead, the practitioner must complete a Form EOIR-60 or [Form EOIR-61](#) that is filed with the document(s) they helped prepare for EOIR or the BIA. Remember that the petitioner remains pro se and that failure to complete a Form EOIR-60 or Form EOIR-61 when required may lead to discipline. Learn more about entering a limited appearance in CILA’s blog post, [Demystifying the “Limited Appearance” in Removal Proceedings: An overview of EOIR-60 and EOIR-61](#).³⁷⁴

Immigration Court Filings

Representatives must use EOIR Courts & Appeals System (ECAS), an online filing system that is available at all immigration courts and the BIA. Attorneys and accredited representatives can use ECAS to enter appearance using Form EOIR- 28 and view case details and upcoming hearings. Visit EOIR’s [ECAS – Online Filing](#) to learn more about how to use ECAS as a practitioner.

PREPARING YOUR CLIENT FOR IMMIGRATION COURT

Your client has certain rights and responsibilities in removal proceedings, and it is important to go over this information with your client in advance of any court appearances. Frequently, at your first MCH, the IJ will ask you if you have reviewed with your client their rights and responsibilities and ask if they can waive a reading of the advisals. This reading by the IJ is frequently waived for a respondent with counsel.

It is recommended to go over this information at the beginning of your representation with your client to ensure the information is conveyed and your client is informed. This also allows you to have the time to explain the information in a more child-friendly way that your particular client will understand, rather than having to do it in a court setting.

³⁷³ ICPM Ch. 11.2(f).

³⁷⁴ You can also check out these resources: EOIR’s final rule [Professional Conduct for Practitioners-Rules and Procedures, and Representation and Appearances](#) (published Sept. 14, 2022), EOIR’s [“Frequently Asked Questions”](#) (last updated August 2023), Northwest Immigrant Rights Project’s (NWIRP) [Limited Legal Assistance in Removal Proceedings: A Primer on EOIR Forms 60 & 61](#) (last updated Jan. 6, 2023), and CLINIC’s [DOJ Issues Final Rule Allowing EOIR Practitioners to Enter Limited Scope Appearances for Document Assistance](#) (last updated Sept. 6, 2022).

YOUR CLIENT'S RIGHTS IN REMOVAL PROCEEDINGS

- Representation at no expense to the government³⁷⁵
- List of pro bono legal services should be provided to respondent³⁷⁶
- Reasonable opportunity to examine the evidence against the respondent³⁷⁷
- Opportunity to present evidence³⁷⁸
- Opportunity to cross-examine witnesses presented by the government³⁷⁹
- To a complete record of the testimony and evidence³⁸⁰
- To accurate interpretation³⁸¹
- To appeal if case is denied³⁸²
- Detained respondent should be notified that they may communicate with the consul or diplomatic officer of their country³⁸³
- Constitutional due process rights

While immigrants have the right to counsel in removal proceedings, counsel will not be provided by the government. This also applies to children, and as a result many children and adult respondents go forward in immigration removal proceedings without an attorney by their side.³⁸⁴

YOUR CLIENT'S OBLIGATIONS IN REMOVAL PROCEEDINGS

- A respondent must tell the truth. These are formal proceedings, and your client will be sworn under oath and will be subject to the penalty of perjury if they lie. Additionally, there are immigration consequences for not disclosing or misrepresenting information.³⁸⁵
- A respondent must be present in court. If your client is not present, unless their presence has been previously waived by the immigration judge, an *in absentia* removal order will likely be issued against your client.³⁸⁶
- A respondent must notify the court of any changes in their address or phone number within 5 days using [Form EOIR-33/IC, Change of Address/Contact Information Form Immigration Court](#).³⁸⁷ The form can be filed in Respondent Access by the Individual or filed in ECAS by counsel, and if the form is printed and mailed/filed, it is recommended that it be printed on light blue paper.³⁸⁸

375 INA § 240(b)(4)(A); 8 U.S.C. § 1229a(b)(4)(A).

376 8 C.F.R. §§ 1003.61, 1240.10(a).

377 INA § 240(b)(4)(B); 8 U.S.C. § 1229a(b)(4)(B).

378 *Id.*

379 *Id.*

380 INA § 240(b)(4)(C); 8 U.S.C. § 1229a(b)(4)(C).

381 ICPM Ch. 4.11. Also, note there is no right to translation of documents at the government's expense. See 8 C.F.R. § 1240.5.

382 8 C.F.R. § 1240.10(a).

383 8 C.F.R. § 1236.1(e), Article 36 of the [Vienna Convention on Consular Relations](#).

384 To learn more about representation rates in immigration courts, you can read Vera Institute of Justice's [Immigration Court Legal Representation Dashboard](#) (last visited Oct. 17, 2025).

385 For example, if it is determined your client made a frivolous application for asylum, then your client could be permanently ineligible for immigration benefits. INA § 208(d)(6); 8 U.S.C. § 1158(d)(6).

386 The INA permits an immigration judge to order a person removed *in absentia* if the government establishes by clear, unequivocal and convincing evidence that proper written notice was provided and that the person is removable. INA § 240(a)(5)(A); 8 U.S.C. § 1229a(a)(5)(A). See also 8 C.F.R. § 1003.26(c).

387 8 C.F.R. § 1003.15(d)(2); ICPM Ch. 2.2(c).

388 See ICPM Ch. 11.2(f).

Child respondents are required to be present in court.³⁸⁹ Otherwise, an *in absentia* removal order could be issued, which presents grave consequences. An IJ may waive the presence of a child respondent at a hearing.³⁹⁰ A waiver must be clearly stated on the record or in a written order by the judge.

REVIEWING AND EXPLAINING THE NTA AND I-213

You should always check the NTA to determine if service was properly conducted. Talk with your client about the NTA, assess for errors, and determine if you will concede service and how you will plead.³⁹¹

Form I-770, *Notice of Rights and Disposition*: Must be provided to each child upon apprehension and informs the child of their rights during the initial processing interview typically conducted by CBP or ICE.³⁹² Failure to comply with the regulation may be grounds for terminating proceedings.

Form I-213, *Record of Deportable/Inadmissible Alien*: An important document in removal proceedings because it typically forms the basis for the government’s allegations against your client.³⁹³ This is a record of the apprehending officer, commonly a CBP officer. It contains biographical information and any statements made by your client. If your client does not have a copy, you may be able to request a copy from the OPLA attorney in advance of your court date or at the hearing.³⁹⁴ If you make a FOIA request to obtain the A file, the I-213 will likely be in your FOIA results. If you receive the I-213 the day of a hearing, you may want to reserve any objections to the document for your next hearing to provide time to review it with your client. There are frequently errors, and you will want to get them corrected, make appropriate objections, and/or possibly move to suppress the I-213 and terminate proceedings.

TALKING WITH YOUR CLIENT ABOUT THEIR RIGHT TO APPEAL

At the end of an ICH, the IJ should ask both parties if they wish to reserve the right to appeal the decision made in the case. It is important to know that responding affirmatively does not mean you have appealed your client’s case. There is a separate process for that. The appeal must be filed in writing with the BIA within **30 days** of the IJ’s decision.³⁹⁵ Answering affirmatively while in court simply means you have reserved your client’s right to appeal so that your client has the option to file an appeal.

Because reserving the right to appeal is discussed at the ICH, it is important to talk with your client before the ICH about the option to appeal. You want to ensure that your client does not get confused at the end of the hearing and understands the process and their options for any next steps in their case. Generally, it is best practice to answer “yes” to reserve your client’s right to appeal and preserve their option to appeal. Even if you talked with your client about this in advance and they do not want to appeal, they

389 According to ICPM Ch. 4.12(c)(3), “Children in removal proceedings must attend all scheduled hearings unless their appearance has been waived by the Immigration Judge.” Children not in proceedings should not be brought to court. If a child disrupts a hearing, the hearing “may be postponed with the delay attributed to the party who brought the child.”

390 Immigration judges should adhere to requirements of 8 C.F.R. § 1003.25 to determine whether to waive a child’s appearance at a hearing.

391 To learn more about defective NTAs and how you can raise issues surrounding errors on NTAs, check out CILA’s resource, *Challenging a Defective Notice to Appear (NTA) in Children’s Removal Proceedings*.

392 The regulation 8 C.F.R. § 236.3(g)(1)(i) says:

Notice of rights and request for disposition. Every minor or [unaccompanied child] who enters DHS custody, including minors and [unaccompanied children] who request voluntary departure or request to withdraw their application for admission, will be issued a Form I-770, Notice of Rights and Request for Disposition, which will include a statement that the minor or [unaccompanied child] may make a telephone call to a parent, close relative, or friend. The notice shall be provided, read; or explained to the minor or [unaccompanied child] in a language and matter that he or she understands. In the event that a minor or [unaccompanied child] is no longer amenable to voluntary departure or to a withdrawal of an application for admission, the minor or [unaccompanied child] will be issued a new Form I-770 or the new Form I-770 will be updated, as needed.

393 See *Matter of Barcenas*, 19 I&N Dec. 609 (BIA 1988) (“Absent any indication that a Form I-213 contains information that is incorrect or was obtained by coercion or duress, that document is inherently trustworthy and admissible as evidence to prove alienage and deportability.”) See also *Matter of Amaya*, 21 I&N Dec. 583 (BIA 1996) (“Although under 8 C.F.R. § 242.16(b) (1996), an Immigration Judge may not accept the admission to a charge of deportability by an unaccompanied and unrepresented minor under the age of 16, the regulation does not preclude an Immigration Judge from accepting such a minor’s admissions to factual allegations, which may properly form the sole basis of a finding that such a minor is deportable.”).

394 DHS often will present the I-213 in court to demonstrate that the respondent is removable. To learn more about this practice and what to do attorney presents the I-213 in court, see Aruna Sury, *What to Do When ICE Submits An I-213 in Immigration Court*, ILRC, <https://www.ilrc.org/resources/what-do-when-ice-submits-i-213-immigration-court> (last updated Dec. 15, 2023).

395 8 C.F.R. § 1003.38(b).

may change their mind and you do not want to foreclose their option to appeal. However, there may be times when the answer is “no,” as is often the case for a client who is detained and no longer wishes to be.³⁹⁶ In that case, you may want to have your client provide a written signed statement regarding their decision to not appeal for your own records.

PREPARING YOUR CLIENT FOR IMMIGRATION COURT HEARINGS

BEFORE ANY HEARING

<p>Who’s going to be there:</p> <ul style="list-style-type: none"> Explain everyone’s role. Advise clients who need an interpreter to use the headphones on the table to hear them and emphasize that they should let you know right away if they cannot hear or understand the interpreter. 	<p>What’s going on:</p> <ul style="list-style-type: none"> Stand when the IJ enters out of respect. No gum, hats, etc. out of respect. Go over the layout of the room and where everyone will sit for the hearing. 	<p>What’s going to happen:</p> <ul style="list-style-type: none"> Prepare your client for what may happen, especially if the IJ may ask the client questions directly.
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BEFORE THE MCH

<p>Who’s going to be there?</p> <ul style="list-style-type: none"> The IJ, government attorney, clerk, and interpreter will be in court. There will likely also be a gallery of people behind your client. 	<p>What’s going on?</p> <ul style="list-style-type: none"> Explain that more than one case will be heard if the case is scheduled on a docket. The IJ may speak to the child individually or as part of a group. 	<p>What’s going to happen?</p> <ul style="list-style-type: none"> IJ may ask your client questions like: Name? Birthdate? Address? Who is with you? Do you want them to represent you? Are you in school? Where do you go to school? IJ may take pleadings and accept application(s). Go over the NTA with your client in advance.
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³⁹⁶ For example, there are instances when a detained client does not wish to appeal because they do not want to be detained any longer. If they are denied, they wish to be removed as soon as possible. In that case, if you answer “yes” you wished to reserve their right to appeal, your client will have to remain detained for at least the 30-day appeal window, whereas, if you indicate “no,” it is possible they could be removed much sooner.

COURTROOM KNOW YOUR RIGHTS (continued)

BEFORE THE ICH

Who's going to be there?	What's going on?	What's going to happen?
<ul style="list-style-type: none">• IJ, government attorney, clerk (sometimes present and sometimes not), and interpreter will be in the courtroom.• Hearings are open to the public, but often there will not be other people present for an ICH.	<ul style="list-style-type: none">• Explain how this hearing differs from the MCH. It is set for a specific date and time for your client's case to be heard.	<ul style="list-style-type: none">• IJ will likely decide pending motions and enter evidence into the record.• If client testifies, the IJ can ask questions, government attorney may cross-examine, and you may re-direct.• If government has witnesses, you may cross-examine.• IJ may make a decision.• IJ will ask if either party wishes to reserve the right to appeal.

Common Procedural Tools in Immigration Court

To learn about other motions commonly filed in immigration court, refer to ICPM [Ch. 5](#). Some information is included below on different procedural options available in removal proceedings. For a more detailed discussion of these procedural tools including trends as well as relevant caselaw, [EOIR policy](#), and additional resources, review CILA's [Procedural Options in Removal Proceedings for Youth](#).

- **Continuance:** Seeking a continuance is common in children's cases because oftentimes a child needs more time to pursue a court order in state court or to wait for adjudication of their asylum or SIJS application before USCIS. Good cause must be shown to grant a motion for a continuance. ICPM [Ch. 5.10\(a\)](#) also provides information on motions to continue.
- **Status Docket:** The status docket is a mechanism immigration courts can use to hold cases in abeyance when the case is not ripe for adjudication.
- **Administrative Closure:** Administrative closure removes a case from an IJ's active calendar, thereby temporarily pausing the proceedings. The case does not go away altogether, but no future hearings will be set until either party moves to re-activate the case by filing a motion to re-calendar, or to dismiss or terminate proceedings.³⁹⁷ On May 29, 2024, EOIR published the final rule, "[Efficient Case and Docket Management in Immigration Proceedings](#)," 89 Fed. Reg. 46742, and the rule went into effect on July 29, 2024.³⁹⁸ The rule changes multiple EOIR regulations and covers several issues including BIA appeals, motions, administrative closure, dismissal and termination, voluntary departure before the BIA, and post-conviction relief. Among other things, the rule codified immigration judges' and the BIA's authority to administratively close cases and set standards for administratively closing and

³⁹⁷ In 2025, DHS began filing motions to recalendar many cases. For more information and practical tips, review Katie Mahoney and Merle Khan, *Responding to DHS Motions to Recalendar*, ILRC (July 1, 2025), <https://www.ilrc.org/resources/responding-dhs-motions-recalendar>.

³⁹⁸ 8 C.F.R. §§ 1003.18(c); 1003.1(l); *Matter of W-Y-U-*, 27 I&N Dec. 17, 18 (BIA 2017).

recalendaring a case.³⁹⁹ An IJ can administratively close a matter even if a party objects. For example, in children’s cases, advocates may file a motion to administratively close removal proceedings at EOIR to allow time for USCIS to adjudicate petitions.

- **Termination & Dismissal:** Terminating or dismissing removal proceedings ends the proceedings. EOIR’s final rule, “Efficient Case and Docket Management in Immigration Proceedings,” codified that both IJs and the BIA have authority to dismiss or terminate cases.⁴⁰⁰ The rule distinguishes the terms “termination” and “dismissal” and provides more information on when an immigration judge or the BIA can terminate proceedings.⁴⁰¹ With the changes, the updated regulations clarify that cases can be *dismissed* when *DHS* moves for dismissal pursuant to 8 C.F.R. § 1239.2(c), and a motion to dismiss *for any other reason* “shall be deemed a motion to terminate” and adjudicated as such.⁴⁰² The regulations also indicate when termination should be mandatory or discretionary.⁴⁰³

Be aware that in 2025, there was a trend for OPLA attorneys to request IJs to dismiss removal proceedings, only for the individuals to be arrested by ICE agents in the halls of the immigration courts and then subject them to expedited removal.⁴⁰⁴ However, this trend predominantly occurred in adult and family’s immigration cases (rather than unaccompanied children’s cases) because unaccompanied children should not be subject to expedited removal.⁴⁰⁵

- **Reopen:** A representative can file a motion to reopen proceedings to ask the IJ to consider new facts or evidence after the IJ makes a decision. ICPM Ch. 5.7 provides information about the filing requirements, what to include in the motion, and the limitations on when requests can be made, and ICPM Ch. 5.9 covers motions to reopen in absentia orders.
- **Prosecutorial Discretion:** OPLA has longstanding authority to exercise prosecutorial discretion (PD) to decide which cases they will prosecute or not. You can seek prosecutorial discretion at different points in the case. The type of relief sought can range from joining in a motion to continue or seeking to administratively close or dismiss proceedings. The likelihood of OPLA exercising discretion varies greatly depending on the current climate and policies, specific circumstances of the individual case, and the particular OPLA attorney involved. Local practitioners may also be able to shed light on whether these types of requests will be considered. Check with the local OPLA office about whether they have any policies or procedures for how to make a request for prosecutorial discretion. If you are requesting prosecutorial discretion, you will likely need some supporting evidence that highlights the unique circumstances of your client’s case. Helpful evidence may include a receipt notice for a pending application for relief, community letter, school records, and/or medical records (especially if medical care is needed in the United States). Be prepared to explain any criminal history or other negative factors. Depending on your client’s age, they may have to undergo a background check.

399 For more information, review NIPNLG’s *Practice Alert: EOIR Final Rule on Administrative Closure and Termination* (June 11, 2024), ASISTA’s *Practice Alert: New DOJ Rule: Administrative Closure and Termination in Removal Proceedings For Immigrants Seeking Survivor-Based Relief* (Aug. 19, 2024), and NILA’s *Comparison of Current and Previous Versions of the Regulations Regarding BIA Appeals, Motions, Administrative Closure, Termination, Treatment of Post-Conviction Orders, and Voluntary Departure* (Aug. 6, 2024).

400 8 C.F.R. § 1239.2(b); 1003.1(d)(1)(ii); 1003.10(b).

401 *Id.*

402 *Id.*

403 8 C.F.R. § 1003.18(d)(1).

404 For more information, review CILA’s recorded presentation, *Working with Unaccompanied Children Aging Out*, as well as NIPNLG’s *Pro Se Guide to Filing a Notice of Appeal After Immigration Case Dismissal* and *What’s Happening With Immigration Court Arrests and Bonds*.

405 *Expedited Removal and Unaccompanied Children: An FAQ*, CILA, ILRC, and NIPNLG (Nov. 21, 2025), <https://cilacademy.org/resource-file/expedited-removal-and-unaccompanied-children-an-faq/>.

CILA-NILA Appellate and Litigation Strategy Resources

Over several years, CILA and the National Immigration Litigation Alliance (NILA) released multiple recorded trainings and written resources to help advocates working with youth beyond the immigration court level. All of the materials are available to review on CILA's *Appellate & Litigation Strategy* [page](#). The recordings and related resources cover:

- Habeas petitions for unaccompanied children (webinars, practice advisory, and sample habeas petitions for adults in ICE custody and a child in ORR custody)
- Federal court basics (webinars, practice advisory, and sample cover sheet)
- Defective Notices to Appear (webinars and practice advisory on in absentia orders)
- Seeking to rescind *in absentia* removal orders before the IJ, BIA, and Circuit Courts (webinar and practice advisory)
- Filing an appeal with the Board of Immigration Appeals (BIA) (webinar)
- Filing a petition for review or judicial stay of removal in the Fifth Circuit (webinar and practice advisory)
- Ready to Win – Moving Beyond Trying Cases at the Immigration Judge Level (webinar)
- Filing administrative claims for wrongful conduct (webinar and checklist packet for FTCA claims)
- Challenging USCIS' denial of a petition for SIJS under the APA (webinar and practice advisory on the APA and basics of a district court action)
- Litigating SIJS delays using mandamus or APA claims (webinar, practice advisory, and example complaint for a SIJS delay case)
- Seeking attorneys' fees under the Equal to Access to Justice Act (webinar and template motion for fees)
- Advanced immigration legal research (webinar)
- Legal writing (webinar)

CILA-NILA also hosted a webinar series, *Litigation for Unaccompanied Children: Updates and Foundational Cases*. Check out the recorded webinars in this series on the same page.

Links to Learn More About HOW TO PRACTICE IN IMMIGRATION COURT

- Check out CILA's 101 [webinar: Introduction to Removal Proceedings for Unaccompanied Children](#) (50 minutes).
- Check out ABA COI's three-part series, *Mechanics of Immigration Court* Parts 1 ([The Master Calendar Hearing & Filing Applications for Relief](#)), 2 ([Corroboration, Preparing Witnesses, and Working with Experts](#)), 2.5 ([Q&A on Corroboration, Preparing Witnesses, Working with Experts](#)), and 3 ([The Individual/Merits Hearing](#)) recorded in February and March 2022 to learn more about the nuts and bolts of immigration court.
- Take a look at CILA's [Bite-Sized Tips for New Practitioners & Pro Bono Attorneys](#), with accompanying videos.

- Read through CILA's resource, *CILA Practice Toolkit and accompanying Checklists, Cheat Sheets & Organizational Documents*, June 2024.
- Read CILA's resource, *Challenging a Defective Notice to Appear (NTA) in Children's Removal Proceedings*, October 2024. Also read ILRC's practice advisory *The Notice to Appear (NTA)*, July 2020.
- Review CILA's resource, *Procedural Options in Removal Proceedings for Youth*, December 2024.
- Review the *Quick Guide: Defending SIJS Clients in Removal Proceedings* created by CILA, ILRC, the End SIJS Backlog Coalition, Safe Passage Project, and NIPNLG, April 2025.
- Check out ILRC's practice advisory *Representing Clients at the Master Calendar Hearing: How to Prepare for an Initial Hearing, with Quick-Reference Checklist*, December 2018.
- Read NIPNLG's community explainer, *A Guide to Requesting a Fee Waiver in Immigration Court*, September 2025.
- Review ABA COI's *Practice Guide Statements as Evidence: Drafting and Editing Declarations, Affidavits, and Letters*, June 2022, to learn about the types of statements, experts, and witnesses in immigration cases as well as practical tips and considerations for drafting declarations or affidavits.
- Read CILA's resource *How to Prepare for an Individual Hearing: Different Practitioners' Perspectives*, July 2025.
- Review CILA's resource, *Trauma-Informed Representation in Asylum Cases: Asylum Merits Hearing Preparation Steps*, June 2025.
- Read CILA's resource, *Youth's Testimony in Immigration Court*, June 2025.
- Read ILRC's practice advisory, *Obtaining Office of Refugee Resettlement Records for Clients who were Detained as Children*, Andrew Craycroft and Rachel Prandini, July 2024.
- Review AIC's advisory, *Freedom of Information Act and Immigration Agencies*, June 2021.
- Consider the *ABA Standards for the Custody, Placement and Care; Legal Representation; and Adjudication of Unaccompanied Alien Children in the United States*, August 2018.
- Read CILA's resource, *Ethical Considerations for Appearing as Friend of Court*, March 2025.
- Review CILA's blog post, *Demystifying the "Limited Appearance" in Removal Proceedings: An Overview of EOIR-60 and EOIR-61*, March 2023.
- Read CILA's blog post, *Protecting Unaccompanied Children who are Not Competent to Participate in Removal Proceedings*, April 2024.
- Read CLINIC's practice advisories and materials on *Representing Noncitizens with Mental Illness*, May 2020.

D. Representation before USCIS and the Asylum Office

Introduction to USCIS

TIPS FOR PRACTICING BEFORE USCIS

- Familiarize yourself with the [USCIS Policy Manual](#).
- You will need a signed Form G-28, *Notice of Entry of Appearance as Attorney or Accredited Representative* to represent a client before USCIS and/or the asylum office.
- Your client may be required to bring their own interpreter to an interview with USCIS.
 - For asylum cases, see [8 C.F.R. § 208.9\(g\)](#) and the [USCIS alert](#). Affirmative asylum applicants generally must bring their own interpreter if they are unable to speak English or want to proceed with the asylum interview in a language other than English.
- During an asylum interview, the attorney may take notes but will not be permitted to speak on the client's behalf while the officer asks questions. You may be given the opportunity to ask follow up questions at the end, which can be useful to bring out additional information or to clarify something. You may also have the opportunity to make a closing statement.
 - You are allowed to indicate that you advise your client not to answer an inappropriate question or to sign something inadvisable, if something like this occurs in the interview.
- Make sure you have your bar card, if applicable, and a form of government identification if the USCIS officer wishes to inspect it prior to beginning the interview.
- Be aware of current USCIS policy regarding enforcement actions at USCIS offices and when USCIS will refer applicants to removal proceedings and issue a Notice to Appear (NTA).⁴⁰⁶

Key Tools & Contacts

- Search all USCIS forms using this [link](#) to find the application your client needs.
- Find the USCIS [Fee Schedule](#), instructions on how to pay [USCIS Fees](#) and how to file for a [Fee Waiver](#), when available and applicable.
- Your client must keep USCIS up to date with their [current address](#). Check out USCIS's website to find out how to do this.
- USCIS provides [case processing times](#) for some applications it processes. Check the time frames to get a better idea of wait times.
- Use this [link](#) to find a [USCIS office](#).
- Find information to prepare for a [Biometric Services Appointment](#).
- Use this [link](#) to access [USCIS's online Self Service Tools](#) including making a [case inquiry](#).
- Explore [USCIS's Contact Center options](#).
- Consider reaching out to the [Ombudsman's office](#) for case assistance, if needed.

⁴⁰⁶ You may need to advise your client about risks associated with filing an application or about who should or should not accompany them to an interview. Only those required to appear in-person should go to the office. During the Trump Administration, there have been reports of arrests of noncitizens with outstanding warrants being made at USCIS offices. On February 28, 2025, USCIS issued [Policy Memoranda \(PM\) PM-602-807](#) with updated guidance on issuing NTAs. In September 2025, USCIS announced that the agency intended to have armed agents at offices that could assist with arrests. See *New USCIS 'Special Agents' Will Be Given the Power to Arrest, Use Deadly Force Against Immigrants* (Sept. 10, 2025), <https://www.americanimmigrationcouncil.org/blog/uscis-special-agents-arrest-immigrants/>.

QUICK USCIS LINKS RELATING TO DIFFERENT FORMS OF RELIEF

- **Special Immigrant Juvenile Status (SIJS):**

- Review USCIS's webpage on [Special Immigrant Juveniles](#).
- If necessary, review USCIS's [Questions and Answers: Appeals and Motions](#).

- **Adjustment of Status before USCIS:**

- Read USCIS's website about getting a [Green Card based on Special Immigrant Juvenile Classification](#). Read more information about getting a green card.
- Consult the Department of [State Visa Bulletin](#).
- Check out USCIS's Adjustment of Status [Filing Charts from the Visa Bulletin](#).
- If necessary, review [USCIS's Questions and Answers: Appeals and Motions](#).

- **Representation before the Asylum Office:**

- Read USCIS's information regarding the [Affirmative Asylum Process](#).
- If your client has applied for asylum before USCIS, you can find use the [USCIS Service and Office Locator](#) to find the closest asylum office and related information.
- Check out USCIS's guidance on [Preparing for Your Affirmative Asylum Interview](#).
- Review the potential Types of [Affirmative Asylum Decisions](#) including a grant or referral to immigration court.

- **U Visa:**

- Review USCIS's webpage regarding [Victims of Criminal Activity: U Nonimmigrant Status](#).
- Review USCIS's [Resources for Victims of Human Trafficking and Other Crimes](#).

- **T Visa:**

- Refer to USCIS's webpage regarding [Victims of Human Trafficking: T Nonimmigrant Status](#).
- Review USCIS's [Resources for Victims of Human Trafficking and Other Crimes](#).

- **VAWA Self-Petition:**

- Review USCIS's [Questions and Answers: Abused Spouses, Children and Parents Under the Violence Against Women Act \(VAWA\)](#).
- Explore USCIS's information [Green Card for VAWA Self-Petitioner](#).

- **Family-Based Claims:**

- Review USCIS's webpage regarding options for [Family of U.S. Citizens](#).
- Take a look at USCIS's webpage regarding options for [Family of Green Card Holders \(Permanent Residents\)](#).

Applying for Employment Authorization before USCIS

ELIGIBILITY FOR EMPLOYMENT AUTHORIZATION

Immigrant clients in the United States may be eligible to apply for and obtain employment authorization as they wait for a decision on their pending legal relief or as they wait for visa availability. Employment authorization allows noncitizens to lawfully work in the United States. Review the [Form I-765, Application for Employment Authorization](#) Instructions to see the eligibility categories in the *Who May File?* section. For example, certain unaccompanied children with pending asylum applications may be eligible for employment authorization under the (c)(8) category while they wait for adjudication of their asylum application, and unaccompanied children may seek employment authorization with a pending application for adjustment of status. Even if your client does not plan on working or seeking employment, having an employment authorization document (EAD) may be a good idea for your client to have an additional form of identification and issuance of a social security number. Talk to your client about the benefits of having an EAD and obtain their consent before applying.

HOW TO APPLY FOR AN EMPLOYMENT AUTHORIZATION DOCUMENT (EAD)

- **What to File:** Use [Form I-765, Application for Employment Authorization](#). Check the edition date to make sure that you are using the acceptable version of the form. Make sure the application is properly signed by the applicant. Submit two identical passport-style photographs of the applicant with the form. Review the *Required Documentation* section of the [Form I-765 Instructions](#) for photo requirements and additional documentation that may be needed for the eligibility category.
 - **TIP:** Form I-765 allows you to request a social security number that can be used to file taxes and apply for other benefits. The social security card will arrive separately from the EAD since it is issued by the Social Security Administration or you may need to request it from them.
- **Filing Fee:** Form I-765 may require a filing fee, depending on the basis you are filing. Review information on the filing fee on USCIS's [Form I-765 webpage](#) and USCIS's [G-1055, Fee Schedule](#). Fees may vary depending on whether it is an initial request or a renewal, and you may have to pay a fee for biometrics services. Use USCIS's [Fee Calculator](#) to estimate the filing fee for your case. Fees are also subject to change, check USCIS's website for the latest information.
- **Where to File:** Certain eligibility categories may file their EAD application online. Check USCIS's [Forms Available to File Online](#) page to see who can file online. You must create or have a USCIS Online Account to file online.
 - Special filing instructions may apply depending on the eligibility category. Review the [Form I-765 Instructions](#) to see if any special filing instructions are required for your case.
 - If you are mailing the application, the filing address can vary. Check the [Direct Filing Address for Form I-765, Application for Employment Authorization](#) to find the appropriate address. It is best practice to write the client's name and A number on the back of each photo and to keep the tracking number of the package you send.
- **Receipt Notice:** You should receive a receipt notice after submitting the application. Keep track of it and its number as you will need it if there are delays in USCIS processing the application.

Remember that employment authorization expires and can be renewed. Renewals may have different rules, deadlines, and filing fees. It is important to submit the renewal on time and before the current EAD expires. The EAD validity period may vary depending on the eligibility category, and some are subject to automatic extension of their expiration dates if the EAD renewal is submitted timely. Review the renewal instructions for the eligibility category to understand the process and requirements.

Links to Learn More About EMPLOYMENT AUTHORIZATION

- For more information about the filing process, check out ASAP’s comprehensive [Work Permits page](#). Resources include a guide and sample work permit application for potential asylum seekers.
- Review CLINIC’s [All About Employment Authorization Documents: FAQs for Legal Practitioners](#), November 2024.
- View the webinar from ABA COI, Vecina, and Immigration Justice Campaign on [Employment Authorization for Asylum-Seekers in Removal Proceedings](#), May 2023.
- Also, check out CILA’s blog post, [Update on EADs for Asylum Seekers](#), September 2022.

Representation before the Asylum Office

Review CILA’s resource on [Trauma-Informed Representation in Asylum Cases: Asylum Interview Preparation Steps](#) for additional information about how to prepare for the asylum interview.

ASYLUM OFFICE—GENERALLY WHAT TO EXPECT FOR ASYLUM INTERVIEW

Agency & Stakeholders Involved: Asylum interviews are conducted by the [U.S. Citizenship and Immigration Services \(USCIS\) asylum office](#) in affirmative cases or in the cases of unaccompanied children. At an asylum interview, there is no opposing counsel. The asylum officer is the adjudicator. The setting is meant to be non-adversarial.

Pre-Interview: When appearing for an asylum interview, you will arrive at the asylum office and check in, as will your client and any interpreter you have brought with you. You will wait in a waiting area before being called into an office for the interview.

Duration: Interviews often last one hour to several hours. The interview length depends on the asylum officer and the case specifics. Let your client know in advance that you may have to wait for the interview. Waiting several hours for the interview to start is not uncommon.

Adjudicator: Interviews are conducted by a single asylum officer. The officer may or may not be an attorney. Other than the officer, there will be no one else from USCIS in the room, unless a newer officer is shadowing and observing. If you need to request an adjudicator to be of a particular gender for the comfort of your client, submit a request to the asylum office in advance. Confirm this request upon check-in. If there has been a miscommunication, you may have to wait longer for a particular officer to become available.

Interpreter: As of September 13, 2023, it is necessary for all individuals to bring their own interpreter to asylum office interviews if they are not fluent in English. Information regarding this requirement and consequences of not bringing an interpreter is detailed in [8 C.F.R. § 208.9\(g\)](#), USCIS’s notice, and USCIS’s webpage on [Preparing for Your Affirmative Asylum Office Interview](#). USCIS will not provide an interpreter during the asylum interview, except if you are deaf or hard of hearing. If this is the case and you need assistance in obtaining an interpreter, contact the asylum office with jurisdiction over your case in advance of your scheduled asylum interview. USCIS has information on their [website](#) regarding how to request a disability accommodation, and it is important to do this in advance.

Record: Keep in mind that the interview is not recorded or transcribed, so you must be certain to take good notes. You may do this by hand or bring your laptop in accordance with any local policies and rules. In limited circumstances, the asylum officer may print out their verbatim notes regarding a specific part of the interview and require the client's signature to the sworn statement.

Proving the Case: Your client has the burden of proof to establish their eligibility for asylum. You will seek to do this through information contained in the asylum application (Form I-589) and any supporting documents you have submitted, such as your client's declaration, other declarations/reports (from witnesses, experts), case documents (e.g., medical records, death certificates, news articles), and country conditions reports. Review CILA's resource *Asylum, Withholding of Removal, and Protection Under the Convention Against Torture (CAT) Declarations* from July 2025 for information and guidance on drafting declarations. Additionally, CILA has two tools available to help practitioners stay organized when gathering evidence to support an asylum claim: *Asylum, Withholding of Removal, and CAT Example Evidence Checklist* and *CILA Asylum Case Theory & Evidence Matrix*. Also, write a cover letter that is similar to a legal memo or legal brief laying out the legal claim and your arguments. The more you can do to make it easier on the adjudicator to have the information they need to grant the claim, the better it is for your client. See [Section III.A.](#) on asylum law.

Review of I-589 & Client Questioning: The officer may ask you some preliminary questions about the file. Frequently officers will go through each of the biographical questions in the I-589 application with the asylum applicant to confirm that all the information is correct and to ensure that there are no updates. If there are updates/edits to the application, the officer will make those changes in pen and ask the applicant to sign confirming that the changes are correct. This can be helpful since it gives the youth an opportunity to make edits if an amended form was not submitted. Consider also preparing an "Addendum to the I-589" ahead of time with the client to submit to the officer at the start of the interview. This makes the process easier for both the officer and youth. The officer then will get started asking your client more substantive questions.

Attorney Follow-Up Questioning: Once the officer is done with questioning, the representative can request time to ask some follow-up questions of their client as well. This is an opportunity to elicit critical information from your client that may not have come out during the interview or to clarify/contextualize any inconsistencies. Officers typically allow representatives to provide a closing statement if they request it. Either after you are done with your questions or after a brief closing statement, the interview will conclude. Some officers will ask for the submission of a written closing statement in lieu of an oral one. If an officer does not allow follow-up questions and/or an oral closing statement, consider submitting a brief, written statement.

Decision: It is unlikely that you will receive a decision immediately. Instead, it will be available for you to pick up in the future, sometimes as early as two weeks, or it may be mailed to you. Check with local practitioners to see how they have been able to receive the decision recently. If needed, you can also ask the asylum officer conducting the interview.

Referral to Immigration Judge: If the asylum officer is unable to approve the asylum claim, they will generally [refer](#) the case to the immigration court for an immigration judge's review. The referral letter will usually give the basis for the referral. The immigration judge will evaluate the asylum claim independently.

Post Interview Client Communications: After the interview, let your client know the interview has concluded and thank them for their strength. In a private space (perhaps outside the USCIS building), ask your client if they have any questions or if anything was confusing to them. It can help to provide an overview of what occurred before reviewing next steps. Ask your client how they are feeling and encourage them to talk with a family member, friend, and/or therapist if the interview experience has been difficult or traumatic. Explain to your client what to expect next in the case and that the asylum officer will either grant asylum or refer the case to an immigration judge. You may wish to schedule a separate meeting to go over this information but do not want too long. Maintain communication with your client while you wait for the decision.

PRACTIC TIPS FOR ASYLUM INTERVIEWS

Working with an Interpreter:

- If you are having trouble finding an interpreter, consider reaching out to law school immigration clinics to see if they have a student volunteer or contact the nonprofit organization that referred the case (if there is one). If possible, it is best to use the same interpreter throughout the life of the case.
- Be a bridge for your client to the interpreter. Explain confidentiality to both your client and the interpreter to help develop a trusting relationship.
- Explain the interpreter's role to them so that they understand they must be impartial and not add new information to the case. They are not there to provide testimony.
- Make eye contact with your client even when speaking through an interpreter. Learn to rely more heavily on non-verbal communication.
- Remind a less-experienced interpreter to interpret verbatim and not in the third person.
- Practice with the interpreter prior to the interview, and make sure the applicant can communicate effectively with them.
- Let the interpreter know that the government may have someone on the phone listening for correct interpretation at the interview.
- Any notes the interpreter takes during the interview will be collected by the asylum officer and added to the file. For this reason, they should be careful of what they memorialize.
- See [Section II.D.](#) and CILA's resource, *Practical and Ethical Considerations and Reminders when Working with Translators and Interpreters* (April 2023) for more guidance tips on how to work with an interpreter.

Supplementing Documents/Correction to Asylum Application:

- Bring any original documents to the interview for inspection by the officer.
- Take copies of the application, your representation document, and any supplemental documents to the interview and provide them to the asylum officer. If you mailed any supplemental documents in advance of the interview, take an extra copy to the interview in case the mailed copy did not make it into the file. Also bring any proof of mailing.
- If there are numerous documents, make an index, tab the documents, and highlight relevant portions of documents for the asylum officer.

PRACTIC TIPS FOR ASYLUM INTERVIEWS (continued)

- Remember that all non-English documents must be translated into English, and you must include a certificate of translation.
- Review all case documents for consistency. This includes ensuring that all forms submitted to USCIS and/or the immigration court along with supporting documentation are consistent. For example, cross-check the information contained in Form I-360 (for special immigrant juvenile status) and Form I-589 to ensure consistency and to avoid a potentially negative credibility finding.
- If you need to make corrections to the application, take a letter documenting the changes and two copies for the asylum officer, and provide this before the interview begins. Be sure that your client has signed and dated any supplement to the application.

Attorney Preparation/Conduct for Interview:

- Bring your identification and, if applicable, your bar card.
- Make a list of key points. If the asylum officer does not cover this information, ask your client these questions related to these points when you are given time to do so at the end of the interview.
- After the officer has completed questioning, ask to proceed with a few follow-up questions of your client if necessary. Try to address any real or perceived inconsistencies in your client's story. Ask the officer whether they see any outstanding issues or problem areas. Offer to address these with additional evidence if possible.
- Take detailed notes of the interview, as it will not be videotaped or recorded by the government.
- Prepare an oral and, if possible, written closing statement. Summarize for the officer why the applicant is eligible for asylum and deserves to be granted asylum. Note that some but not all asylum officers are lawyers. Your summary is particularly helpful in cases where the officer would like to grant relief but needs your help in finding a legal basis for doing so.
- Review guidance for asylum officers particular to children's claims, such as the [USCIS RAIO Directorate – Officer Training Children's Claims Training Module](#) (December 6, 2024).
- Remember if an officer acts inappropriately, you should address the situation when it occurs and ask for a supervisor. Sometimes it may be necessary to make a complaint. Review the [USCIS Policy Manual](#), Vol. 1, Pt. A., Ch. 9 for more information on making a complaint.

Preparing Your Client – Logistics Planning:

- For youth with past trauma, going through the asylum interview process can be stressful when there are many unknown variables on the day of the interview. To the extent possible, walk them through the process during your prep sessions, including step by step information about walking through security screening, checking in at the window, possibly getting a picture and fingerprints taken, and waiting for long periods. Show them the asylum office building on Google Maps so they know what it looks like. Providing this level of detail can minimize surprises and thereby empower them to navigate the stress of the asylum interview with more confidence.
- If your client has children included in the application, they will need to attend the interview. If your client does not have someone who can babysit, try to find a volunteer to stay with the kids in the waiting room. Consider being prepared with activities and snacks for the kids. Depending on the children's ages, if they are very young and are not able to be interviewed (for example, if they are

PRACTIC TIPS FOR ASYLUM INTERVIEWS (continued)

nonverbal), you can ask the officer at the beginning of the interview to ask questions of the child first (which your client can answer on their behalf as their parent). The child may then be able to go back to the waiting room with the volunteer caretaker.

- Let your client know what they can and cannot bring into the USCIS office and discuss appropriate attire. Remind your client to dress professionally for the interview—to dress nicely like they are attending a religious service or going to a job interview. Provide some specific tips such as avoid wearing a T-shirt, take out any piercings, cover any tattoos, do not wear a hat, etc. You may also want to suggest bringing a sweater in case the office is cold.

Preparing Your Client – Reviewing Information, Strategy, & the File with Your Client:

- When beginning interview prep, it can be helpful to remind your client of their case status (e.g., asylum, employment authorization document (EAD) status, special immigrant juvenile status (SIJS), immigration court). It will likely also help to review the date they submitted their I-589 application and with whom, as well as where they are in the asylum process. Explain the goals and purpose of the asylum interview and frame the interview within the bigger picture of their case strategy to help ease the stress of the interview. This can help empower your client to focus better and help them prepare for the interview.
- Depending on their age and skillsets, provide your client with a copy of the application and their declaration. Provide the declaration in your client's best language, if possible, so that they can review it easily. Ask your client to review dates/events if they can do so. Keep in mind that your strategy and how much emphasis to put on re-review of the declaration will depend on the youth's age, abilities, and personality. For example, you do not want a very studious client to study the materials so much that they seem robotic during the interview. For some clients, it might be best to recommend reviewing a timeline so that they can review those details in advance instead of the full declaration. For a younger child, it may help to use drawings or a series of drawings that guide them through their story.
- Remind your client of the legal requirements for the case and what you are trying to prove, as well as your case theory and strategy. This information may help your client have a full understanding of the proceedings and their desired outcomes.
- Review the application and declaration with your client and note any changes.
- If you include any expert evidence, be sure your client is aware of what information is included in that evidence. It also helps to briefly review the other supplemental evidence submitted.

Preparing Your Client – Reviewing What to Expect for the Interview:

- Explain the setup of the desk and other furniture in the office of an asylum officer so that your client knows what to expect. It may help to share visuals or to create a drawing, so the youth has a better understanding.
- Explain your role and the role of others who will be at the interview.
- Explain that both you and the asylum officer will take notes during the interview.
- Instruct your client to wait for the interpreter to finish talking before responding. Help your client practice taking pauses while they speak, even mid-sentence, so that there is not too much information to be interpreted at any one time. Let them know that if they are asked to stop speaking by the interpreter or asylum officer, it is not a bad thing, it simply means they need a pause to catch up

PRACTIC TIPS FOR ASYLUM INTERVIEWS (continued)

with the interpretation. It can be helpful to take a deep breath occasionally while speaking to allow for a natural pause for interpretation, and to help your client stay grounded in the moment.

- Empower your client to notify you regarding any difficulties that they are having understanding or hearing the interpreter. Let them know that it is essential that this issue is raised to you as soon as possible during the interview, not afterward. You want to be able to help resolve the issue as quickly as you can, during the interview.
- Explain to your client what will happen after the interview. The asylum officer may approve the case or refer the case to the immigration court. They will wait to issue a decision until a later date. You will either have to pick up the decision from USCIS or wait for the decision by mail. Explain that if the asylum officer does not approve the case, the case will likely be referred to an immigration judge to consider.

Preparing Your Client – Preparing for Client Questioning:

- Talk to your client about the questions an asylum officer will commonly ask at the beginning of an interview such as: “What is your name?”, “Do you want this individual (full name of representative) to assist you today, to represent you?”, “Have you seen this Form I-589 before?”, and “Did someone review this form with you?”. If your client only calls you by your first name, be sure that they know your full name, so they are not thrown off hearing your last name. Additionally, some time may have passed since the youth last saw the I-589, especially if there was a delay between the time of filing the I-589 and the interview being scheduled. It is important to refresh the youth’s memory in advance of the interview regarding the form and its contents. Other common questions about the form that youth should be prepared to answer are: “Did someone help you fill out this form?”, and “If so, who?” Many youth think that the correct answer is “no,” when in most situations they received assistance. If a prior attorney worked with them on the application, they might need a reminder of that person’s name. Another common question is: “Are you aware of the entire contents of your application?” Many times, youth may forget or be unaware of the full contents. It helps to review the contents beforehand in case this is asked. The youth can at least let the officer know then that their attorney reviewed the file’s documents with them recently. Reviewing how to answer these frequently asked questions will help the youth begin the interview with more confidence.
- Talk to your client about telling their story through their interview. Ask them whether there are any aspects of their story that they really do not want to have to discuss. Discuss options for how you can go about making sure that the necessary information is still available for the asylum officer, such as referencing their declaration. Clearly set expectations for your client so they understand that you and the asylum officer will have the opportunity to ask questions. You can attempt to limit the scope of the testimony and rely on other evidence, if requested/needed by your client, but it will also depend on the officer and how the interview is going whether this will be feasible.
- Ensure that your client knows that the asylum officer generally will start asking them questions. You will be listening and taking notes. You will ask any follow-up questions, if needed afterwards. Explain that you can ask questions, but that you cannot answer them.
- Remind your client to tell the truth, to listen carefully to the asylum officer’s questions, and only answer the questions asked. Emphasize that the most important thing is that they answer truthfully.
- Empower your client. Let them know it is okay to ask for a break to go to the bathroom or rest for a moment. It is okay to show emotion. It is also okay to ask the officer to repeat a question, let the

officer know when they do not understand a question, and respond with “I do not know” or “I do not remember.” It often helps to practice this in prep sessions. Ask your client to practice asking for a break or asking to repeat a question when practicing. This will help empower them to do so on the day of the interview.

- Practice reviewing mock interview questions, including “yes” and “no” questions, so they can practice and be more comfortable with giving both answers. The ABA COI and HIAS resource [*Asylum Interview Prep Supplement*](#) can be used in helping review mock questions.
- If you know of distinct ways that your client’s trauma may manifest itself during testimony (e.g., complete stoicism, crying, stumbling over words, etc.) be prepared to refer to evidence you have hopefully admitted about how trauma has affected your client.

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